THE RECALL OF PUBLIC OFFICERS

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THE RECALL OF PUBLIC OFFICERS

A Study of the Operation of the Recall in California

BY

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PREFACE

THE recall is a device so essentially democratic in its method that any satisfactory study of its operation calls for more than statistical and procedural analysis. The writers have sought to determine, not only the extent, but the manner of its actual use, to discover something of the underlying causes of recall movements, and to ascertain the way in which electorates respond to the political emergencies evoked by recall campaigns. To meet these requirements, a general estimate of the recall has been accompanied by an intimate study of its operation in the state in which it has been the longest and most extensively employed.

The effort to cover all aspects of the operation of the recall in California has resulted in chapters of varying interest to the general reader. Chapters three and nine will probably appeal more to persons interested in the legal and technical phases of recall procedure than to those interested in the human aspects of popular government.

The writers desire to express their gratitude to the many scores of public officials, attorneys, students of politics and other interested persons throughout California whose coöperation has made this intensive study of the recall possible. They are especially indebted for assistance in gathering the material used to Harry C. Biby, Ernest Galarza, Franklin Hichborn, George H. Maxfield, Samuel H. Peck, Emory Ratcliffe, to the Commonwealth Club of California, and to Dr. John R. Haynes, who permitted the use of his valuable records.

Miss Anne Mumford, William G. Bonelli, and Benjamin F. Stelter have given invaluable aid in the revision of the manuscript, and Fred A. Schuckman has contributed materially in the tedious work of reading the proof and preparing the index. It is of course understood that the writers themselves assume full responsibility for whatever shortcomings and limitations may appear in the following pages.

F. L. B.
F. M. R.

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CHAPTER I

GENERAL ASPECTS OF THE RECALL

THE "progressive movement" in American politics was so varied in its nature, in its field of activities and in its leadership that it would be difficult to identify and define in a few words. Many of its methods and objectives appear visionary and futile to the disillusioned critic of today. Perhaps it was lacking in an adequate unifying philosophy and was in reality a hodge-podge of uncoordinated and sometimes misdirected efforts on the part of restive farmers, thwarted industrial workers, respectable reformers, and impatient radicals, each group intent on accomplishing its own favorite reform and oblivious of the scope of the entire movement. In its entirety, however, it became a conflict possessing a vigor and a sincerity bred of the most ample justification and need. Viewed in its proper setting of what Beard calls "the politics of acquisition," with its corruption and mismanagement of government for selfish ends, the progressive movement arises as a crusade of the common people of the United States to recover their government from a limited class which had appropriated it for their private benefit. The leaders of the movement may have been negligent or superficial in the matter of an adequate philosophy to justify their program, but they were in-

tensely practical and effective in the way in which they identified glaring evils in the social and political order and prescribed forthwith definite and practical means for their elimination and control. And out of the crusade came a vitalizing of democracy and a new social philosophy, which constituted a real revolution in the popular estimate of the rôle of government and the right of the people to direct its functions for the general good.

The initiative, referendum and recall are among the most definite products of that aspect of the "progressive movement" which sought the removal of corrupt influence in government and the improvement of the governmental process especially with reference to the facilitating of majority rule. Considered by themselves, these measures might appear as fantastic experiments in Utopian democracy; but with their background of many decades of struggle against the misuse of government by self-seeking minorities and their venal political agents, they stand out as significant and useful weapons of democratic control in the hands of any electorate alert and wise enough to use them constructively.

The initiative and referendum were not new institutions. Provisions similar in principle had existed in the United States from early times. The traditional right of petition and the widely established provisions for petitioning for local improvements, annexations, and the like were closely related predecessors of the initiative; and requirements for the submission to the voters of state constitutional amendments, city charters, charter amendments and bond issues had been in effect for many years. In fact, direct popular government, as in the New England town meeting, existed to some extent from the very beginnings of government in the American colonial period.

The recall, however, was a much more novel scheme

which, while suggested in the Articles of Confederation [1] and discussed in the Federal Convention,[2] first came into practical existence in this country in the charter of the city of Los Angeles in 1903. Although a somewhat similar institution existed in the constitutions of several cantons of Switzerland,[3] the originators of the Los Angeles provision were familiar with the idea, only through its advocacy by Socialist-Labor and Populist groups, and by one or two progressive writers. In so far as they were concerned, therefore, it was a provision newly invented in the United States.

While the recall has commonly been discussed and considered with the initiative and referendum as direct legislation and frequently adopted with them as an integral part of the same reform program, it is, to be exact, quite different in its field of operation from that of the initiative and referendum. The latter are modifications of the principle of representative government; the former is an attempt to make government more representative by increasing the responsiveness of public officials to the will of the majority. In brief, the recall is "a special election to determine whether an official shall be super-

[1] Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday of November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

[2] Herbert S. Swan, "The Recall," in W. B. Munro, *The Initiative, Referendum and Recall*, ch. XII, "Although both Madison and Yates are silent in their reports concerning it, the recall no doubt was thoroughly discussed in the Federal Convention especially in regard to the recall of senators. Luther Martin in his 'Genuine Information to the Maryland Legislature' strongly opposed the adoption of the Constitution because it omitted this feature. The principle also aroused a long and intensely interesting debate in the New York Convention. The two Livingstons, John Lansing, and Alexander Hamilton engaged in the controversy."

[3] For a discussion of the history of the recall in Switzerland see the *Yale Review*, Vol. XVII, pp. 206-209.

seded before the ordinary expiration of his term." [4] To be sure, the idea of removing an official from office before the termination of a fixed period of service is by no means unique. Removal by judicial process, by impeachment, by legislative address, and by executive action are long established practices. Thus the recall is merely an additional, and supposedly more expeditious and effective means, placed in the hands of the people themselves, of getting rid of unfaithful, incompetent, or disobedient officials. In so far as representative government is concerned, therefore, the plan follows the idea that a "representative" is a "delegate" of his constituency; and any indictment of the recall must involve criticism of the capacity of the people not only to select, but to pass judgment upon the activities of their political agents.

The Adoption of the Recall.—During the years that have elapsed since the original introduction in 1903 of the recall in the charter of Los Angeles it has been adopted, in somewhat varying forms, to apply to state officers in eleven states and to public officials in well over a thousand municipalities. The extension of the recall might have been slower had it not been for the nation-wide attention directed to the plan by the successful recall from the Los Angeles city council, shortly after the measure had been adopted, of a machine politician who had voted to award a very dubious contract.[5] A scheme that brought such swift retribution to unfaithful public servants made a very decided appeal to municipal reformers who were working for more responsible government; and by 1907 recall provisions had been placed in a number of municipal charters both in and outside of California, and Des Moines had written the recall, as well as the initiative and referendum, into its new commission form of

[4] James D. Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon*, p. 191.
[5] *Below*, pp. 227-231.

government. This application not only gave impetus to the popularity of these devices but led to the identification of the recall with the commission form of city government in many states where the provision has not been otherwise adopted. A total of fifteen states has now provided for the use of the recall in all cities.[6] Twenty-three others have provided for its partial use, generally where the commission or manager type of government is in operation.[7]

In state-wide adoption of the recall, Oregon was the pioneer. In 1908 the people of that state performed the "final crowning act to complete the temple of popular government" [8] by passing a constitutional amendment giving electors power to recall any elective public officer in the state. Meanwhile the progressive movement was sweeping toward flood tide in state and national politics, and the recall, as one of the popular provisions in its program, was receiving more than its fair share of attention. To the demand by the People's party, in 1904 and 1908, for a "direct vote for all public officers with the right of recall," was added the advocacy by the Socialist party, in its 1908, 1912, and 1916 national platforms, of the adoption of the recall nationally as well as locally. Mr. William Randolph Hearst's Independence party boarded the recall band-wagon in 1908; the Prohibition party sanctified the recall with its blessing in its 1912 and 1916 national platforms; and T. R.'s own Progressive party in 1912 urged on the states "the policy of the short ballot with responsibility to the people secured by the initiative, referendum and recall." In 1920 the Farmer-Labor party held that democracy still "demands that the

[6] Arizona, California, Colorado, Idaho, Illinois, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Dakota, Oregon, Washington, and Wisconsin.

[7] The following states make no provision whatsoever for the use of the recall: Alabama, Delaware, Indiana, Kentucky, Maryland, New York, Pennsylvania, Rhode Island, Utah, Vermont.

[8] Quoted in Barnett, *op. cit.*, p. 191.

people be equipped with the instruments of the initiative, referendum and recall."

The adoption of the recall by ten other states was the almost immediate response. California put it in its constitution in 1911 as a significant item in a triumphant and long-fought-for reform program. Arizona sought admission to the Union in the same year with a constitution that provided for the recall, including the recall of judges.[9] President Taft, by vetoing the enabling Act, although it provided for the submission of this question to the people of the state, in the form of an amendment, influenced the repassage of the Act with the insertion of the words, "except members of the judiciary." In 1912, however, Arizona, having received statehood, reincluded the judicial recall in its constitution.[10] Colorado, Idaho,[11] and Washington followed in 1912, Colorado including a provision for the recall of judicial decisions. Michigan adopted the recall in 1913, Kansas and Louisiana in 1914, and in 1920 North Dakota, largely through the influence of the Nonpartisan League, adopted the plan. In all but Idaho, Louisiana, Michigan and Washington the recall is applicable to judicial as well as to other elective officials, and in Kansas it may be invoked against appointive as well as elective officials.

With the adoption of the recall by North Dakota in 1920 the progress of the nation-wide movement for the adoption of the recall came, temporarily at least, to a halt. Reaction was in the saddle and progressivism was either weary or gone in search of new ideals. Even in the La Follette campaign of 1924, with its revival of ancient and familiar progressive war-cries, the recall was an almost neglected issue. Very little has been said or written

[9] *American Year Book*, 1911, p. 262.
[10] *Ibid.*, 1912, p. 47.
[11] The legislature of Idaho has never passed the necessary legislation under the authority conferred by the constitutional amendment of 1912 to make the recall operative in that state.

either for or against the plan for several years. Perhaps it has reached the limit of its extension, or possibly the next wave of rising liberalism will reinclude it in a new program for the reclamation of democracy. At any rate the recall apparently has come to stay in the territory where it has been adopted and tried, and not infrequently it is included in new municipal charters. It is an institution readily susceptible to criticism wherever used because of its personal, hard-hitting methods, and dissatisfaction with certain details in its operation has given rise to amendment of old provisions and experimentation with new models; but once adopted there has been little manifestation of any desire to abandon the recall, and suggestions to that effect commonly meet with strong popular disapproval.

While the recall is usually thought of as applying to elective political officials, there are in reality five different varieties, all aspects of the same general principle, but each involving a somewhat distinct problem in the popular control of government and therefore involved in a special field of controversy. These five aspects are the recall of elective officials, the recall of appointive officials, the recall of judges, the recall of judicial decisions involving the constitutionality of laws, and the advisory recall of federal officials.[12]

The Recall of Elective Officials.—The recall of elective officials other than judges is the generally adopted form and is the only type that has had extensive use. It was one of the most popular battlegrounds of the progressive movement since it afforded splendid range both for the unrestrained enthusiasm of the prophets of the new democracy and the soulful forebodings of the decimated but intrepid survivors of the old guard. While the former dreamed dreams of a completely liberated popular will and a continuous control "calculated to preserve at all

[12] Benjamin Parke De Witt, *The Progressive Movement*, pp. 235-243.

times the relation of master and servant between the people and their representatives," [13] the latter conjectured disturbing nightmares of chaotic conditions that would result from repudiating our constitutional system of government and inaugurating what was "the last modification of the ancient popular systems of government before their final downfall and disappearance." [14]

The recall has been less popular and less widely adopted than the initiative and referendum, not merely because to many states the ability of the voters to regulate acts of public officials seemed sufficient without removing the officials themselves, but because it was radical and without precedent. The theoretical controversy over the proposal involved the very nature of representative government and resulted on both sides in the most ingenious arguments, which had, however, a tendency to minimize the more important considerations.

"To complete the work of destruction which the direct government agitators have in mind," declared the opposition, "nothing was needed but the right to organize a party to turn duly elected officials out of place and to set up others in their stead." [15] It was further argued against the recall that it would be used for personal and partisan purposes, that it would become the tool of petty factions in their quarrels and bickerings, and hence would lead to political demoralization. It was held that the recall would weaken official courage and independence, that it would suppress the qualities most desired in public officials and result in official timidity and time-serving. If tenure was to be made subject to the passing whims of a fickle public, the recall would be merely one more deterrent to high-class men seeking office. In fact, it was a

[13] Delos F. Wilcox, *Government by All the People*, p. 171.
[14] Chas. M. Hollingsworth, "The So-Called Progressive Movement," *The Annals*, Vol. XLIII., September, 1912.
[15] E. P. Oberholtzer, *The Referendum, Initiative and Recall in America*, p. 454.

"blow aimed at the dignity of all public life." [16] It involved a false interpretation of the American form of representative government and of the proper relation of an elected representative to his constituency. By its nullification of the principle of electing representatives with due deliberation only at stated intervals, it destroyed another of the traditional checks upon the tyranny of the majority, and by rendering officials subservient to the varying popular moods and demands it deprived the public of the benefit of their best judgment used independently for the general interest. The willingness of heedless people to sign petitions even "to hang their own grandmothers" would work grave injustice by giving disgruntled factions the means of bringing honest, capable officials into disrepute, and the way would be open for frequent and costly elections that would not only lay too heavy a burden on the time and intelligence of the electorate but would involve personal issues that would inflame people's emotions, stimulate rash and hasty action, and result in constant confusion.

The exponents of the recall, on the other hand, asserted its efficacy as a means of continuous popular control over men in public office. No electorate could be absolutely certain, especially when the devious methods for putting forward candidates were taken into consideration, either of the capacity or the sincerity of its chosen agents; hence there should be a continuing right to correct mistakes and to check the deliberate betrayal of the people's will. Furthermore the recall was not intended to render men in office less independent, but to remove their dependence on the boss who nominated them and the corporations that financed their campaigns. The public admired courage provided it was used for instead of against their interests; hence there was little danger that a public official intelligently and courageously performing his duty

[16] *Ibid.*, p. 470.

would become a victim of the recall. The leading deterrent to the seeking of public office by the best type of men was present already in the almost universal existence of corrupt political practices which self-respecting men found hard to tolerate—practices which direct legislation and the recall would tend to eliminate.

The friends of the recall made light of the lurid pictures drawn by its opponents of impending chaos resulting from overindulgence in its use, as they believed that it would be seldom employed. The mere knowledge of its existence and potential force would be sufficient to keep officeholders perpetually mindful of their responsibility to the public. It was, as Woodrow Wilson expressed it, "the gun behind the door." It would also, in much the same manner, clear the way for the greatly needed increase and concentration of official responsibility and the lengthening of terms of office without the fear of any long-continued abuse of power.

Contrary to the forebodings of those who feared that the extension of popular rule through the recall would still further overburden an already incompetent electorate, it would, its proponents contended, simplify political issues by making it possible to remove an official from the shelter of a political organization and make him stand or fall on his own merits as a public servant; it would develop citizenship by leading to discussion and critical analysis of the activities of governmental agents; and it would help to do away with those abuses of the party system resulting from the long ballot. Instead of placing dangerous emphasis on the fictitious idea of equality, it brought to intelligent and public-spirited leadership a greater opportunity to direct opinion on specific issues within the scope of the intelligence of the average citizen.[17]

[17] For a careful and detailed presentation of the arguments for both sides see Delos F. Wilcox, *op. cit.*, pp. 169-206.

That the exponents of the recall were right when they held that representative government was cursed with imperfections sadly in need of correction, no one can deny. Fulsome veneration for the Fathers who had provided us with "government by the people, acting not in person, but by representatives chosen by themselves," could not cover up the fact that these representatives too frequently proved to be mediocre in ability and energy, deficient in integrity, disloyal to the public interest, and willing tools of the self-interested minorities who had contrived to put them in authority. As to whether the corrective was to be found in the recall, together with the initiative and referendum, the direct primary and kindred reform proposals, only time and experience would tell. With regard to the recall the real question narrowed down to the capacity of the general public for intelligent and consistent political action. Did there exist, or could there be developed, a public opinion ready and able to pass intelligent judgment upon the issues which might be raised in recall elections involving the honesty, the faithfulness, the legality, and the efficiency of the conduct of holders of public office?

The Recall of Appointive Officials.—The recall of appointive officials has never achieved great popularity. It has been adopted only by one state, Kansas, and by a small number of local areas of government. Not only have the opponents of the recall principle denied any logical basis for this form, but many of its exponents have opposed its application to administrative officers. It was held to be fundamentally unsound, especially when applied to technical officers on questions of efficiency, on the ground that it requires of the electorate a technical knowledge which it does not possess. "In my opinion," declared Herbert Croly, "the adoption of any such device in the interest of administrative popularity would in the long run fatally injure the value of administrative

agencies to a progressive democracy. The recall is a useful device for preventing officials who are elected for long terms and endowed with large powers from misrepresenting their constituents; but its application to administrative experts, whose authority depends upon their ability to devise adequate means of carrying out the declared policy of the state, would be disconcerting and mischievous." [18]

On the other hand, the electorate has not yet succeeded in emancipating itself entirely, in state and local government, from the long ballot with its inclusion of numerous administrative officials. Largely responsible for this condition is the feeling on the part of the public —a feeling that was especially prevalent in the days of the progressive movement—that the alternative of executive appointment is in conflict with the theory of popular sovereignty. Furthermore, it is true that while appointment opens the way to efficiency it carries also the suggestion of an irresponsive bureaucracy. There may be some virtue, therefore, in the suggestion of the recall as a compromise to secure the advantages of the methods of both election and appointment. Permanent or long term appointment of men to office, with provision for recall should occasion arise, offers a possible reconciliation of efficiency with responsibility. This assumes, however, that the people have enough sanity and good judgment to use the recall sparingly and with discretion. Experience has shown that when electorates have gained the legal right to the recall of appointive officials they have used it in very few instances. As to whether these instances have demonstrated the good judgment of its users is highly questionable.[19]

The Recall of Judges.—The proposal to apply the re-

[18] Herbert Croly, *Progressive Democracy*, pp. 372-373.
[19] *Below*, pp. 223-226, the recall of a city manager of Long Beach.

call to judges came in for the most violent criticism. It was held by many to be an unwarranted attack upon the independence of the judiciary, looked upon with dire suspicion by those who regarded the courts as the special guardians of the privileges of property and business, and contemplated with righteous horror by most members of the judiciary themselves. In 1911 the American Bar Association adopted a resolution condemning the recall of judges and appointed a committee to carry on a campaign against it.

The opponents of this form of the recall held that it would subject the courts to "momentary gusts of popular passion" and that the judges would lose their fearlessness and independence and become spineless and timid. Elihu Root declared that "it would strike at the very foundation of our system of government. It is imperative that we protect individuals against the democratic absolutism of the majority." William H. Taft went still further and averred "that it lays the ax at the root of the tree of well-ordered freedom, and subjects the guarantees of life, liberty and property without remedy to the fitful impulse of a temporary majority of an electorate." Dr. Butler denounced it as "an outrage of the first magnitude," and as "the most monstrous perversion of republican institutions and of the principles of true democracy that has yet been proposed anywhere or by anybody." [20]

Those who advocated the recall of the judiciary did not contend that the general public possessed the capacity to determine whether a judge had properly applied the technical rules of law in making his decisions. It was the conduct of judges acting in other than a purely judicial capacity that they wished to bring under popular control. They had been aroused by the blind adherence of the

[20] N. M. Butler, *Why Should We Change Our Form of Government*, p. 32.

courts to outworn economic dogmas, by their reluctance to encroach on the privacy of business, and by the manner in which they had tied the hands of legislatures as agencies of social betterment.

The exponents of the recall of judges felt "that in exercising their power to declare laws unconstitutional judges are performing not a purely judicial function, but one which is *essentially political*, and in so doing they become decisive factors in determining public policy." [21] They could see no reason why a judge thus engaged in the political function of determining public policy should be exempt from direct responsibility to the people. It was their contention that the courts had sometimes used this power to block the adoption of new policies essential to social progress and to safeguard the privileged position of a few against the legitimate demands of the mass of the people. The recall was a desirable and necessary means of curbing such unrepresentative conduct.

Not only is a judge a creator of public policy on occasion, declared the advocates of the judicial recall, but he is frequently called upon to perform non-judicial duties of an administrative nature as well. He is, moreover, susceptible to the same influences that undermine the social responsibility of other public officers. Judicial independence is largely theoretical. Judges in thirty-eight states are elected by popular vote, and in the case of judges of the inferior courts, are commonly elected for short terms. This tends to produce judges who are dependent for election upon the forces that control the electoral machinery and finance campaigns—the bosses, the machines, the underworld interests, and the great corporations. The recall, they maintained, would aid in locating the responsibility of judges with the people where it belonged, would increase popular confidence in

[21] P. O. Ray, *Political Parties and Practical Politics*, 3rd edition, p. 411.

the courts, and would therefore make possible a desirable lengthening of terms of office.[22]

The prediction of Delos Wilcox [23] that the chief danger in the judicial recall was not that it would be misused to degrade the courts and reduce the judges to cringing subserviency and time-serving, but that the people would neglect to use it adequately as a corrective, seems to have been nearer the truth than the baleful forebodings of its opponents. Its use appears to have been confined to not more than a half-dozen instances in the states of Arizona, Oregon and California; and to have been based, with one exception,[24] not upon dissatisfaction with technical judicial decisions, but on the manner in which certain administrative duties were performed and on the laxity in the administration of certain criminal laws.[25]

The Recall of Judicial Decisions.—Certain reform leaders, while they hesitated to expose the judiciary to the hazards of the recall, believed that some sort of popular curb should be placed upon their authority to declare legislative acts unconstitutional. To accomplish this they proposed the "recall of judicial decisions,"—in reality a popular referendum on the policy-forming decisions of judges which nullified laws on the ground of unconstitutionality.

This proposed recall of judicial decisions was one of the bones of contention in the presidential campaign of 1912. The platform of the Progressive party included the following plank:

> That when an Act, passed under the police power of the State, is held unconstitutional under the State Constitution,

[22] For a detailed presentation of arguments in favor of the recall of judges see Delos F. Wilcox, *Government by All the People*, pp. 211-227.

[23] Delos F. Wilcox, *op. cit.*, p. 227.

[24] One motive for the attempted recall of Judge Coke of the 2nd Judicial Dist., of Oregon was dissatisfaction with his instructions to the jury in a murder case. Allen H. Eaton, *The Oregon System*, p. 103.

[25] *Below*, pp. 250-251, 257-259.

by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the Act to become law, notwithstanding such decision.[26]

Colorado adopted a constitutional amendment embodying this proposal in 1913. According to this amendment no court lower than the supreme court of the state has the power to declare laws unconstitutional. If the supreme court takes such action, either with regard to an act of the legislature or a city charter, the decision is held in abeyance for sixty days. During this period a referendum petition may be circulated, and if signed by five per cent. of the voters an election must be held within ninety days to enable the people to override the decision of the court if they so desire.

The plan was really a limited method of constitutional amendment by popular vote, much less effective than the more widely adopted constitutional initiative. There was nothing about it especially dangerous or vicious, and since the supreme court of Colorado held in 1921 that the amendment as adopted in that state is in conflict with the national constitution and therefore void,[27] it has disappeared entirely as a political issue.[28]

The Advisory Recall.—Two states, Arizona and North Dakota, have attempted by an ingenious indirect method to apply the recall to certain classes of federal officials. Arizona has endeavored to provide for the recall of representatives and senators of the state in Congress, and of federal judges having jurisdiction within the state. Can-

[26] Quoted in K. H. Porter, *National Party Platforms*, p. 337.

[27] *Am. Pol. Sci. Rev.*, XV, 413-415 (1921).

[28] For detailed discussions of the recall of judicial decisions see W. D. Lewis, "A New Method of Constitutional Amendment," *Annals*, XLIII, pp. 311-325 (1912); W. F. Dodd, "Social Legislation and the Courts," *Political Science Quarterly*, XXVIII, pp. 1-17 (1913); Theodore Roosevelt, "The Judges, the Lawyers, and the People," *Outlook*, CI, pp. 1003-1007 (1912); A. B. Hall, *op. cit.*, pp. 174-202.

didates for the two houses of Congress are given an opportunity to agree to abide by a popular vote for their removal. In the case of a federal judge the people may vote to advise his resignation and at the same time recommend to the President their choice of a successor. The North Dakota amendment of 1920 also attempts to make the recall apply to representatives in Congress.[29] As all such officials hold office under federal law, the so-called recall is purely "advisory." It may have some influence in the campaigns of elective officials; but its effect on a federal judge depends, as P. O. Ray says, "upon the judge and the president." [30]

Recall Procedure.—All recall laws, while they are susceptible of infinite variation, embody the same fundamental steps in procedure. Briefly, these steps are the securing of a petition demanding the recall; the checking of the petition to determine its "sufficiency"; the holding of an election to determine the question of the official's removal from office; and the provision for filling the possible vacancy.[31]

The petition must contain a statement of the charges against the official and a demand for an election on the question of his removal. It must be signed by a certain percentage of qualified voters, the number of signatures required varying from ten to fifty-five per cent., based usually on the total vote cast at the last preceding general election for all candidates for the office affected. This general scheme is sometimes modified or restricted by such requirements as the filing of a preliminary affidavit of intention, the placing of a time limit on the completion of the petition, the provision for signing for

[29] Session Laws of North Dakota, 1921, p. 257.

[30] P. O. Ray, *op. cit.*, p. 404.

[31] The recall laws of California illustrate almost every conceivable variation in recall procedure. For an analysis of these laws see Chapter III, "The Law of the Recall," pp. 56-92.

or against the recall, and the provision that the petition, instead of being circulated, be deposited in some public place for voluntary signing.

The completed petition is filed with some designated officer, who must check it and report on its sufficiency within a specified time. If the petition proves insufficient, a short period is usually allowed for the securing of additional signatures.

If the petition is found to conform to the requirements, a date is set by the proper authority for the holding of an election. This usually occurs from thirty to sixty days after the petition has been approved. Elections are conducted in one of three ways. One plan is for the incumbent to become a candidate to succeed himself in competition with other candidates for the office. Under this arrangement the specific question of his removal does not come before the voters. The method now most commonly in use provides for a vote for or against the recall of the official, and on the same ballot a separate vote for a possible successor. If the majority of those voting favors the recall, the official is removed and the vacancy is filled by the candidate receiving the highest vote. A third arrangement provides for the holding of the election exclusively on the question of removal from office. If the incumbent is recalled, the successor is chosen either at a second election or according to the usual method provided by law for the filling of vacancies.

Recall laws provide certain limitations and regulations designed to safeguard the interests of officials. A period of grace ranging from three months to a year from the beginning of a term in office is commonly granted an official within which the employment of the recall against him is prohibited. Second attempts to recall the same official during a single term are often limited or prohibited. The official under fire is generally permitted to place on the sample ballot or on the petition a formal

statement in his defense. In a few instances provision is made for refunding the cost of the campaign to an official who succeeds in defeating the movement for his recall.

THE USE OF THE RECALL.—The predictions of the originators of the recall that it would be used sparingly have been borne out by twenty-five years of experience. There have been but two instances of the use of the recall against officials elected by the vote of an entire state. In 1921 Governor Lynn J. Frazier of North Dakota, with the attorney general and the commissioner of agriculture, were recalled by the opponents of certain issues connected with the Nonpartisan League movement. This use of the recall was unique in that it was directed against leaders of the organization which had influenced the adoption of the principle but one year before. The other instance was that of the recall of two members of the public utility commission of the state of Oregon. This movement resulted from popular dissatisfaction with certain rate increases which had been authorized by the commission.[32]

The recall has also been applied on a few occasions to members of state legislatures [33] and to judges of county courts, but its use has been confined almost entirely to local areas. No complete study of its operation in cities, counties, and other local political subdivisions has ever been made; and since no record is kept of recall elections except by these areas themselves, it would be a formidable undertaking to investigate them all. J. D. Barnett, in his able study of the initiative, referendum, and recall in Oregon,[34] brought out that the recall had been resorted to only seventeen times in that state in seven years following its adoption. J. O. Garber addressed inquiries to 149 city-manager cities known to have provision for the

[32] J. D. Barnett, "Fighting Rate Increases by the Recall," *National Municipal Review*, XI, pp. 212-213.
[33] *Below*, pp. 271-279.
[34] J. D. Barnett, *op. cit.*, pp. 189-218.

recall in their charters, and to fifty-five cities known to have used the recall. The replies supplied data covering "a total of one hundred attempted recalls in twenty-nine states from Maine to California." "Of the 956 cities known to have this instrument," he was able to secure a record "of only seventy-two which have had elections, only thirty-six of which have been successful in recalling officers." [35]

Estimates have been made, based upon these and other limited studies, that the recall has not been employed more than a total of one hundred fifty times, or an average of not over six times a year, since its adoption a quarter of a century ago.[36] The writers have endeavored to compile as complete a record as possible of the use of the recall in California, and in view of the information which has come to light it is necessary to add materially to this estimate. But when the large number of officials which have fallen within the jurisdiction of the recall is borne in mind, the number of those who have fallen victims to its operation is still comparatively insignificant.

The study of the operation of the recall in California presented in the following chapters seeks to take advantage of the opportunity offered by investigation in a limited field to do more than offer statistics. It attempts not only to present as complete a record as possible of the somewhat extensive use of the recall throughout the state in which it originated, and to analyze the extraordinary evolution of the law of the recall in home-rule charters; but to look into underlying causes of recall movements, to observe the conduct of recall campaigns, and to form an estimate of the relation of such activities to the problems of local government and the functioning of human

[35] J. O. Garber, "The Use of the Recall in American Cities," *Nat. Mun. Rev.*, XV, 259-261 (1926).

[36] P. O. Ray, *op. cit.*, p. 415. C. A. Beard, *American Government and Politics*, 5th ed., p. 516.

nature in politics. It is hoped that the results will shed some light, not only on the recall as it operates in a single state, but on its general efficacy as an instrument of democracy.

CHAPTER II

THE ADOPTION OF THE RECALL IN CALIFORNIA

The city of Los Angeles possesses the distinction of being the first American political area to adopt and use a plan for the recall of public officials. Direct legislation provisions had already made their appearance in the charters of a few Pacific Coast cities; but the recall, though advocated in the national platform of the Socialist Labor party in 1892 and 1896, and also, under the name of "the imperative mandate" in certain of the state platforms of the Populist party, remained unadopted and untried in the United States until it became a part of the Los Angeles city charter in 1903. So novel and so at variance with traditional American practice was this political innovation that the circumstances surrounding its adoption by an average group of citizens in this far western community carry more than usual interest.

The explanation of the undertaking of this democratic experiment is to be found partly in popular discontent with the disordered background of local politics, but more in the indomitable energy of certain individual crusaders for government "that would actually serve the people." While the problems brought about in most American cities by rapid industrialization and the presence of large foreign populations were to a large degree lacking, there were special causes contributing materially to the mediocrity of Los Angeles government in addition to those that were responsible for the generally low standards of municipal administration throughout the country.

Like the great majority of American cities the Los

Angeles city government was under the control of a spoils system and subject to the corrupting dictation of local special interests. But in addition to this chronic state of affairs, there was the more significant factor of the control of the politics of California by the Southern Pacific Railroad. This extended not merely to the complete domination of the state government, but to the control of city politics as well. Not even such minute details as dictating the appointment of the receiving hospital surgeon in Los Angeles to facilitate the efforts of claim agents with persons injured on the company's lines escaped its careful attention. The Los Angeles city government was controlled absolutely by the Republican machine that ruled throughout the state and took its orders from the Southern Pacific Railroad. The local Los Angeles boss, who named most of the city officers, was a well-known employee of that organization.

Further contributing to the imperfection of Los Angeles politics was the great eastern invasion of the 80's, stimulated by a railway rate war which at one period reduced the fare to California to as low as $5. The population of the city increased from 11,000 in 1880 to 50,000 in 1890. While this sudden influx of population created a golden Utopia for the promoter and the adventurer, it brought temporary disruption of the social life of the community and necessitated not only political reorganization but the formation of a new social structure as well.[1]

By 1900, after three attempts to revise the city charter of 1889 had failed, strong sentiment had developed for a complete reorganization of the framework of the local government. Through the efforts of the press and of influential citizens the council was prevailed on to call an election, and a board of freeholders was chosen July 17

[1] For a very satisfactory brief history of Los Angeles see C. D. Willard, *History of Los Angeles*, 2nd edition, 1911.

to draw up a new city charter. A large majority of the fifteen members was quite aware of the necessity for thoroughgoing changes in municipal government organization and procedure; but one member especially was convinced of the futility of orthodox reform programs and had consented to become a candidate for the board almost solely because of a desire to secure the adoption of vigorous measures that would give the electorate a continuous check upon the conduct of its chosen officers.

Dr. John R. Haynes, tireless advocate of the initiative and referendum, and father of the recall provision in the United States, had come to Los Angeles in 1887 from Philadelphia. A busy man of abundant means, broad culture, and wide acquaintance, with many interests in life in addition to a large medical practice, he nevertheless found time to go into politics, not through any desire for public office, but for the promotion of certain measures which he believed would place government more firmly in the hands of the people. After many years of observation of corruption and mismanagement in Philadelphia politics, he had come to the conclusion that the ordinary political panaceas were of no avail, that the election of good men to office was an accomplishment only spasmodically achieved and then frequently disappointing in results, and that the only hope for civic progress lay in enabling the honest majority of people to concentrate definitely on some clear-cut principle or project. To do this it was necessary to "give to the honest majority of the electorate the power to initiate legislation refused them by their legislative bodies—the Initiative; give to the honest majority the power to veto the acts of their legislature—the Referendum; and give to the same honest majority the power to recall from office at any time any inefficient and incompetent officer—the Recall."[2]

Dr. Haynes went about the achieving of his objective

[2] Quotations from Dr. John R. Haynes, *Story of the Recall.*

in the vigorous and thoroughgoing manner that for a quarter of a century has made him a figure to be reckoned with in the history of progressive politics in California. He promoted the election of a progressive president of the board who was willing to place him on the committee on legislation and let him select the other two members. Next he broached the subject of direct legislation, very carefully avoiding mention of the radical and unknown recall lest it prejudice consideration of the whole program. Winning over the chairman and the third member of the committee to the idea by a carefully prepared analysis showing intelligent action by the people on the great majority of state constitutional amendments submitted to them since 1879, he secured not only their authorization to proceed with the drafting of initiative and referendum measures but their promise of support as well.[8]

With the aid of two friends, Mr. C. W. Petchner, a lawyer with "reform ideas," and a Mr. W. H. Stuart, Dr. Haynes drafted the measures and included a recall provision in the hope that it might be slipped through with the others. In so far as the initiative and referendum were concerned the task was not difficult, as much had been written regarding them and a few cities had them in use. With regard to the recall, however, the situation was different. They had never heard of its existence in Switzerland; Populist and Socialist Labor party platforms merely mentioned it; and references in current books and writings were casual and few. So it was necessary for them to work out an entirely original recall provision. The result of their efforts caught the fancy of Conrey and Colyear and so was approved, with a few minor changes, by the committee and submitted to the board

[8] The chairman of the committee was N. P. Conrey, now a presiding justice of the appellate court of the state of California, and the third member, W. H. Colyear, a local business man.

of freeholders along with the direct legislation provisions.

When the recall came before the board for discussion, there was evidence that they had been the subjects of an intensive educational campaign. The committee's report on the initiative and referendum was unanimously adopted and the majority of the board agreed to the recall in principle and differed only on such details as the percentage of signatures to be required on recall petitions and the form of the petition itself.[4]

Opposition to the recall by members of the board was limited and ineffective. Mr. Sherman Page, an attorney who had recently come to Los Angeles from the Middle West, took a firm but futile stand as the spokesman against the proposal. Along with the usual reactionary claptrap he included a really masterful summary of the strongest arguments against the recall principle; but in spite of his efforts the recall provision was passed by a vote of thirteen to two.

In the meanwhile the public was being enlightened on the initiative, referendum and recall by the daily press. The three were usually mentioned together, especially in the headlines. Most of the space, however, was given over to favorable discussion of direct legislation and comparatively little was said of the recall. Its backers, feeling that because of its novelty it was in a more precarious position than the other two measures, hesitated to stir up argument upon it and hoped the three provisions would be regarded as inseparable.

The small amount of comment on the recall that did

[4] It was a strange coincidence that the chief figures in the argument over the proper number of signatures were Dr. John R. Haynes, originator of the recall, and Mr. Harry Chandler whose paper, the *Los Angeles Times*, has probably done more violence to the recall than any other agency. It happened, too, that while Mr. Chandler argued for a high percentage of signatures, he actually favored the recall. See *Los Angeles Times*, September 29, 1900.

[5] *Los Angeles Express*, October 2, 1900.

appear was favorable,[6] and a fortuitous combination of circumstances soon conspired to make the support of both liberal and conservative newspapers unanimous. Dr. Haynes happened to be the family physician and personal friend of General Harrison Grey Otis, military hero of the Philippine insurrection and owner of the *Times*, a paper of distinguished conservative tendencies; and Harry Chandler, son-in-law of the general and present owner of the *Times*, was a member of the board. So this paper joined the others in giving the recall favorable recognition and declared, as the sessions of the board drew toward a close, that "perhaps the most salient feature of the proposed new charter, which has yet been adopted, is that providing for the initiative, referendum and recall."[7]

But when work on the new charter was almost complete the supreme court of the state handed down a decision, as the result of a friendly test case, that a "freeholders' charter can be changed only by amendments submitted by the legislative authority of the city," and that therefore the present board of freeholders was an illegal body. In the hope that the city might still receive the benefit of the work of the board, a number of attorneys suggested that the changes might be submitted by the council to the people for adoption as amendments; but the council took advantage of the general confusion to do nothing.

[6] The *Los Angeles Herald*, for instance, listed among the very important provisions under consideration the initiative, the referendum and "the imperative mandate or recall," and went on to say that, "the latter provision is something new. . . . The supporters of the innovation point out that there is now no way in which the people themselves can secure the removal of any official before the expiration of his time, no matter how bad his record might be. The plan is yet to be approved by the people and it is impossible to say how it will work until it is tried. It is not likely that there will be frequent removals of officials by this method, but the very fact that they could be so removed would doubtless have a salutary influence" (October 3, 1900).

[7] *Los Angeles Times*, October 14, 1900.

As it turned out, however, the work of the Freeholders' Board of 1900 proved by no means a failure. It had given rise to a campaign of education and had crystallized a number of progressive ideas into practical working form. The agitation for better governmental machinery continued unabated, and in 1902 another board undertook the task of bringing the city's system of government up to date. The new board could not, however, under the ruling of the supreme court, be known as a board of freeholders, and was termed a charter revision commission.

Dr. Haynes was not a member of the new commission, but he nevertheless found very effective means to promote his three political protégés,—the initiative, referendum and recall. There are other than intellectual methods of political persuasion, and on this occasion it happened that the resourceful doctor chose a very happy blending of several varieties. What he did was to arrange an exclusive dinner party at Levy's, a famous old café, for the commissioners' special benefit. So faithfully did the chef carry out his orders that food of unsurpassed quality and drink of choicest vintage were to circulate in abundance, that it was not until an hour past meeting time that anyone remembered the business-session scheduled for the city hall. At that point, the hospitable host did not find it at all difficult to persuade the appreciative commission to have the records brought to the banquet room. Whereupon the meeting convened under the most congenial auspices to listen to the guest of honor, Mr. Eltweed Pomeroy, president of the National Direct Legislation League, speak on the direct legislation issue.

Near the close of the dinner Frank Finlayson,[8] with whom the doctor had had that day an interview, arose and proposed for favorable consideration the initiative and referendum, not merely, as he expressed it, on

[8] Frank Finlayson, for years a justice of the appellate court of the state, is a prominent California attorney.

account of the convincing talk of the speaker of the evening but because these measures were the heart's desire of their genial host. By this time the members of the commission were in a sufficiently sympathetic mood to approve the proposal unanimously and to refer it to the subcommittee on public utilities of which Finlayson was chairman.

In due time Dr. Haynes secured the unanimous approval of the utilities committee for the 1900 draft of the initiative and referendum. One member noticed the text of the recall, which was appended to the text of the initiative and referendum, and suggesting doing a complete job by running it through, too. This met with the approval of the committee, and thus it happened that the recall, along with the initiative and referendum provisions, was duly presented to the commission.

Meanwhile the Direct Legislation League of California appeared on the scene, a nimble organization that sought, by getting planks into party platforms, influencing civic, labor and farm organizations, and winning the support of civic leaders throughout the state, to secure the adoption of direct legislation not only in Los Angeles but for the entire state. The fact that the league consisted almost entirely of Dr. John R. Haynes, president, George Dunlop, secretary, and a very impressive letterhead, in no way impaired its effectiveness, and it functioned actively all through the years of campaigning to get the direct legislation program into the state constitution. This organization and the newly organized Municipal League circulated petitions asking the charter revision commission to submit to the electors an amendment providing for the initiative and referendum, but once more the recall was ignored.[9]

[9] Identified with the movement for the initiative, referendum and recall were many eminently respectable citizens who permitted the use of their names for the cause without quite knowing what it was all about or why they were so favorably inclined. Dr. Haynes was an

The commission, on July 3, adopted, with a few amendments, the three provisions compiled by the board of freeholders two years before. Favorable sentiment was unanimous and the fears of the backers of the recall seemed groundless. There still remained, however, the task of getting favorable action by the council, approval by the voters, and ratification by the state legislature. Since so little had been said of the recall there was no telling how it would be accepted by the public. Much depended upon the press, and the press, after some hesitation, arose to the occasion with complete unanimity.

Of nineteen proposed amendments submitted by the revision commission on September 20 the council referred fifteen, including the initiative, referendum and recall, to be voted on, each separately, at the regular city election, December 1. It must be admitted that the council, in adopting this portion of the commission's report, had very little conception of its radical nature. The members were for the most part persons of little consequence who were easily influenced to pass the measures through the social attentions of their distinguished sponsor. The recall they seem to have regarded as a whimsical notion which both the politicians and the serious-minded voters could be trusted to suppress.

The local papers continued to build up support for the recall as well as for direct legislation as the campaign developed. But in spite of all of this favorable opinion there seemed to be the feeling that it was the part of wisdom and good management to keep the recall as much

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immensely busy and popular physician, had most of these people as his patients, and succeeded in communicating some of his enthusiasm for radical reform to persons who today are no doubt horrified to think that they ever, in any way, encouraged such heresies. Numbered among the Direct Legislation League officials were distinguished judges, bank presidents, army officers, and clergymen. In 1908 Mr. E. L. Doheney, who in his younger days was guilty of radical political tendencies, was the treasurer of the league.

as possible within the nimbus of the popular sentiment for direct legislation. As long as the *Times*, by favorable comment, continued to radiate respectability upon it, the recall was safe; and as late as November 8 this eminent molder of sane public opinion continued to endorse all three measures with the explanation that "the surprising merit of the plan lies in the fact that in all important affairs of municipal procedure and policy the people would have to be consulted."

Then the *Times* weakened. Either the strain of such consistent deviation from traditional policy had been too great, or twinges of a highly sensitive conscience had dictated fair play for the other side. At any rate, just nine days before the election it printed conspicuously a two-column article under the glaring headline, "Blow to Direct Legislation Idea," setting forth the opinion of "a prominent Los Angeles lawyer too modest to permit the use of his name," that it was more than probable that direct legislation was unconstitutional, and that anyway "it is the open door to every agitator and socialist in the land" and "will result in much turmoil and the presentation of poorly drawn and nonsensical legislation, . . . will subject the city to great expense for special elections, and will inaugurate a practice not in accord with the principles of our wisely-formed, long-tried, successful and excellent form of government." With regard to the recall, the city might be "kept in a perpetual state of special elections" by the supporters of the defeated candidate; and administrative officials performing technical duties would be at the mercy of the popular hue and cry.

These "characteristic gyrations" of the *Times*, as one rival feelingly expressed it, called forth redoubled effort on the part of the enthusiastic exponents of the new program, and the closing days of the campaign were full of

action. The columns of the *Times* were bombarded with refutations of the attack by prominent attorneys and others,[10] the public was deluged with editorials, marked ballots, tracts and pamphlets, and the *Herald* conducted a unique cartoon campaign that was perhaps the most convincing of all. The general policy followed, however, was to emphasize the initiative, referendum and civil service reform, and leave the recall to take its chances with the other measures on the ballot.

The result of the election was an overwhelming landslide, not only for the initiative and referendum and civil service reform, but also for the recall. Direct legislation was adopted by a vote of better than six to one, civil service by nearly five to one, and the recall by four to one.[11] The recall received the third highest vote of the thirteen proposed amendments that carried, showing that it had gained the popular favor in spite of the rather scant and apologetic attention it had received during the campaign.

There was an almost unbroken tradition in the state legislature for approving municipal home-rule provisions without question, but strong opposition to the more radical Los Angeles charter amendments was fully expected. Violent attacks did develop in both houses upon the initiative, referendum and recall. The recall especially shocked the sensibilities of the politicians, who regarded it as revolutionary and complained of its doubtful constitutionality. Senator Shortridge made a characteristic speech in which he maintained that city charters were like declarations of secession from the Union and not

[10] George I. Cochran, now president of the Pacific Mutual Life Insurance Company, was one of the most active and outspoken supporters of the measure. He was at that time the personal attorney of Dr. John R. Haynes.

[11] Total vote cast for mayor 19,342.

	Yes	*No*	*Total*
Initiative and referendum	12,105	1,955	14,060
Civil service reform	11,083	2,486	13,569
Recall	9,779	2,469	12,248

proper measures to support at any time.[12] In spite of the distastefulness of several sections, both the senate and the assembly voted the entire program through, the former by 32 to 2, the latter by 66 to 5. Thus on January 22 the recall passed from the realm of theory to a place in the organic law of the city of Los Angeles where it could, in time, justify the hopes and expectations either of its exponents or of its detractors.

Los Angeles was not the only California city in need of governmental reform, nor was it the only locality in the state where a reform movement was gathering momentum. In most of the municipalities with freeholder charters, disgust with local conditions, coupled with a constantly increasing resentment at the corrupt political control of the state by the Southern Pacific machine, was arousing progressive sentiment. This led first to the reform of local politics, and culminated within a few years in a state-wide progressive movement that brought about the complete overthrow of Southern Pacific domination and the adoption of a sweeping program of political and social reform.

The adoption of the initiative, referendum and recall in Los Angeles, with the almost immediate successful use of the recall in removing a machine politician from the council, presented very strikingly a specific type of reform for the consideration of other cities. Consequently, before the addition of the recall amendment to the state constitution in 1911 twenty-five California municipalities had introduced the recall, as well as the initiative and referendum, into their charters.[13] The first favorable action on the recall after that of Los Angeles came in 1905 when it was adopted by Pasadena, Fresno, San Bernardino, San Diego, and Santa Monica. The

[12] *Los Angeles Times,* January 23, 1903.

[13] For an account of the evolution of recall law through development by municipalities see pp. 58-71, 81-92.

method of adoption in Pasadena was unique. The influence of the tirades of the *Los Angeles Times*, after a recall election had resulted from this paper's plans for securing a public printing contract, was sufficient to dissuade a rather timorous charter revision committee from including the provision. But the Pasadena citizens refused to be denied this new weapon. They initiated a recall amendment and carried it in spite of violent conservative opposition.

San Francisco adopted the recall in 1907 under startling circumstances that not only gave the measure new significance but contributed later to its state-wide adoption. In 1905 Eugene E. Schmitz was elected mayor for a third term on a Union-Labor party ticket which made a clean sweep of the election against a reform coalition. This included eighteen members of the board of supervisors, most of them of little standing or ability—truck-drivers, bartenders and clerks—who had no appreciation of the requirements of the office and looked on it merely as a means of personal gain. The success of the campaign was due mainly to Abraham Ruef, the big "city boss" and political go-between of the vice interests and public service corporations.

Within a few months, on April 18, 1906, San Francisco was laid low by earthquake and fire. Four nights later the board of supervisors met in their usual Sunday night secret session to listen to the proposals of an agent of the street railway company that apparently was ready to cooperate with the city officials "in the shameless work of looting the city at the time of her greatest need." Mayor Schmitz himself deserted his post shortly and set out on a tour of Europe in search of notoriety and social preferment.

For a considerable period before the great disaster a small group of progressive leaders, thoroughly aware of

the corrupt nature of the Schmitz régime, had been planning its overthrow. They found they could depend on District Attorney William H. Langdon to enforce the law, but their program needed both financial support and expert assistance. Rudolf Spreckels, a public-spirited young banker, agreed to raise a fund of $100,000. Francis J. Heney, who had just gained national recognition for his prosecution of the Oregon land-fraud cases, was secured to act as assistant district attorney, and with him was engaged William J. Burns, the detective.[14]

By October, 1906, they were ready to begin action. Whereupon Acting-Mayor Gallagher, who was Ruef's chief lieutenant on the board of supervisors, boldly removed Langdon and appointed Ruef himself as district attorney. An injunction against this high-handed procedure was secured, Ruef and Schmitz indicted on five charges of extortion, and after months of obstructive legal technicalities, convicted.

Meanwhile, after sixteen supervisors had signed affidavits denying that they had committed felonies of any character, three of them were trapped in bribery. This led to confessions from fourteen involving in enormous bribery transactions not only local politicians but also prominent members of the bar and leaders in the social, financial and industrial life of California. The supervisors, who were granted immunity for their testimony, had agreed to resign; but this was futile until Schmitz could no longer appoint their successors. So it was necessary to keep this gang of disreputable grafters in office until after the conviction of Schmitz, and to use them to appoint the man chosen to complete the term of the ousted mayor, Dr. E. R. Taylor, Dean of the Hastings

[14] For full accounts of the San Francisco graft prosecution see Franklin Hichborn, *The System*, and Fremont Older, *My Own Story*.

School of Law. They were then permitted to get out as rapidly as the new mayor could select their successors.[15]

This new board took under consideration almost imme-

[15] The prosecution was not satisfied merely with ridding San Francisco of a set of corrupt officials. They hoped to convict the people of influence and wealth who had debauched the city government, and with this objective the graft prosecution continued for several years. But no sooner had indictments been brought against certain individuals who stood high in financial circles than the sentiment of San Francisco big business and its controlled press shifted to opposition and even ridicule. Every conceivable legal subterfuge was resorted to by the highly subsidized attorneys for the defense. Rumors of jury fixing were prevalent. Ruef and Schmitz were freed by the appellate court on technicalities that were severely criticized by such eminent authorities as Dean Wigmore of the Northwestern University School of Law. The city swarmed with the detectives of the defense tracking and corrupting the detectives of the prosecution, and in August, 1908, a raid on the offices of the United Railroads resulted in the discovery of over 700 reports and other private documents belonging to the district attorney's office. The integrity of the prosecutors was attacked by directors of the corporations involved in the bribery scandals, and attempts made to ostracize socially such reform leaders as Spreckels, Phelan, Heney, Langdon and Older. Fremont Older, editor of the *Bulletin*, and one of the most active and courageous of the prosecution group, was kidnaped by thugs under the personal direction of an attorney for the United Railroads and taken as far as Santa Barbara before he was rescued. Two attempts were made to murder Gallagher, chief witness for the prosecution, by dynamiting his house, and on November 13, 1908, during Ruef's second trial, Heney was shot down in the court room by an ex-convict who was found in his cell the next day dead from a revolver shot. Whereupon Hiram W. Johnson volunteered his services, brought Ruef's trial to a successful conclusion, and thus projected himself dramatically into the reform movement in which he was to play a stirring and important part.

In 1909 Heney, though not yet fully recovered in health, was persuaded to become a candidate for district attorney, and was defeated through the efforts of the unnatural combination of the public service interests and organized labor. The new district attorney failed to press the bribery cases and more than a year later Judge Lawlor reluctantly agreed to dismiss the indictments. Only one bribe-giver had been convicted and he was freed on a technicality by the state supreme court.

From the standpoint of justice and good government in San Francisco, the graft prosecution was a partial failure, but, as Franklin Hichborn put it, "Had there been no San Francisco graft prosecution there would, in 1910, have been no successful political uprising in California. Hiram W. Johnson would not have been a candidate for governor. The accomplished reforms which are the boast of the state and the models which other states are adopting, would still be the unrealized dreams of 'reformers.'" Franklin Hichborn, *op. cit.*, p. 464.

diately the drafting of certain amendments to the charter. No time could have been more auspicious for the promotion of the recall idea, and Dr. Haynes hurried to San Francisco to urge the adoption of a recall amendment. He found most of the supervisors uninformed and rather indifferent, but discovered one recall enthusiast who directed him to the chairman of the committee on legislation, Matt. I. Sullivan, a prominent attorney whom Mayor Taylor had appointed to the board. Sullivan apparently placed no great confidence in the recall, but agreed to submit a provision requiring the signatures of fifty-one per cent. of the voters on the petition. This did not suit the doctor, so he went to see Heney, secured a letter to Sullivan, went back to Sullivan's office, but could not get him to reduce the figure below forty per cent.

The board was to meet that afternoon to act on the proposed amendments, and the doctor used what little time remained to interview Mayor Taylor and the supervisors. Several of them agreed that forty per cent. was too high for practical use but declared that Sullivan's recommendation would probably go. The recall was the twenty-first on the list of proposed amendments to be considered, the room was close and the day warm, and much to the doctor's discomposure members kept dropping out until there was barely a quorum when Sullivan read his recall proposition. The lone recall enthusiast immediately moved to amend by making the petition requirement twenty, instead of forty per cent.; and, calling attention to the presence of the father of the recall, moved that he be given an opportunity to speak on the subject. Mayor Taylor gave him just four minutes, which he must have used most effectively, as Sullivan agreed to compromise on thirty per cent., and the amended measure was adopted at once.[16] It was submitted to the

[16] San Francisco has since reduced the percentage to ten.

voters on November 6, 1907, and approved by a vote of 22,961 to 5,565.

While here and there throughout the state local grafters were being ousted and more efficient methods of municipal administration were being introduced, the attention of a small group of determined progressive leaders was being focussed on the serious problem presented by the corruption in state politics. The condition that existed has been described a great many times, but perhaps never more picturesquely than by Samuel G. Blythe, in the *Saturday Evening Post*. Said Mr. Blythe:

> It isn't likely that any person with knowledge of the facts will dispute the statement that the Southern Pacific Railroad dominated the politics of California for many years. Indeed, that is a mild manner of putting it. The Southern Pacific Railroad not only dominated the politics for many years but owned the politics, owned part of the legislature, owned many of the officials—no matter what party was in power—and ran things to suit itself. Moreover, the Southern Pacific reached out of California and dealt in larger political commodities. It mixed in the politics in adjoining states and had a grasp on a good deal that happened at Washington.
>
> It was a great political as well as a great commercial enterprise. It dictated nominations, carried elections, laid down policies, used money flagrantly, debauched not only individuals but whole communities. The reason is simple enough. When the Southern Pacific entered California, that state, a thousand miles long and three hundred miles wide, was practically an empire by itself. It was on the farther side of the continent, separated from the East and Middle West by tremendous mountain-chains and by hundreds of miles of unsettled plains and a great deal of arid land; and there were but few means of communication with the Atlantic Coast. California was a state apart, inconceivably rich in every natural resource, favored as to climate, eager for transportation facilities, ripe for exploitation.
>
> So this great railroad organization exploited it. Commercially the road was a tremendous asset to California. Natu-

rally the men who built and owned the road wanted to press their advantage to the utmost. Political considerations were as great to these men as commercial considerations, for unless the road controlled the politics, it could not attain that full measure of monopoly its owners deemed necessary for a proper return on their investment and for such extension, control of terminals, absolutism over rates and such other advantages as were desired. A hostile legislature, or a hostile governor, or hostile aldermen or councilmen or mayors, might not only hold up the development of the property but might make that development more costly than was contemplated. The last was the controlling motive undoubtedly. Hence the Southern Pacific saw to it that men who would be friendly to all its enterprises, which are numerous and varied, were put in power.

This was not so much of a task in the early days as it became later, especially after other transcontinental lines began getting into California. When competition became keener political control became more necessary. In addition to owning legislatures it was essential to own judges—courts, even —and the road developed into a vast, complex holding company for the politics of the state, bi-partisan, dictating impartially to Republicans and Democrats so far as party lines were concerned, but always partially for the Southern Pacific.

. . . The system was as simple as two times two make four. The road had a political machine directed by a most astute politician, William F. Herrin. The machine reached into every county. It had men everywhere whose business it was to see to it that the right kind of delegates went to the conventions and that the delegates made the right sort of selections. That was all there was to it; and, as the road usually controlled the conventions of both parties, the election results were almost always satisfactory.[17]

The genesis of the uprising that led to the political revolution of 1910 was in Los Angeles, where Walter Parker, Herrin's chief lieutenant, was the boss of the Republican party. A bold attempt by the railroad interests

[17] Samuel G. Blythe, "Putting the Rollers under the S. P." *Saturday Evening Post*, January 7, 1911.

to steal a valuable franchise which was thwarted by threat of recall, led, in 1906, to the organization of a non-partisan movement to free the city from machine control. Headed by such men as Meyer Lissner, Marshall Stimson, E. A. Dickson, Russ Avery, and Dr. John R. Haynes, a "Committee of One Hundred" organized a "Non-partisan City Central Committee" which placed an independent municipal ticket in the field to oppose the machine candidates and succeeded in filling seventeen out of twenty-three offices.

Meanwhile a Republican state convention of more than ordinary disrepute had been held at Santa Cruz. Abe Ruef was there at the height of his power and delivered the votes of the San Francisco delegation intact to the Southern Pacific candidate for the governorship.[18]

Under the influence of the victory in Los Angeles and of the disgust with the conduct of the Santa Cruz convention, the Los Angeles leaders were impelled to join hands with progressives from other cities in an attempt at a state-wide political house cleaning. After much con-

[18] Ruef, in his story of his political career, "The Road I Travelled," states the consideration was $14,000. See *San Francisco Bulletin*, August 31, 1912.

One careless indulgence of vanity at the convention that helped later to deliver the machine into the hands of the progressives was the taking of a flashlight picture of a banquet held at the home of Major Frank McLaughlin, chairman of the State Central Committee. This picture, which was given wide circulation under the caption, "The Shame of California," showed Abe Ruef seated in the place of honor beside the host. The other guests, all standing, included J. W. McKinley, head of the Southern Pacific Law Department at Los Angeles, who was chairman of the convention; James N. Gillett, who had just received the party nomination for governor, with his hand resting on Ruef's shoulder; Walter F. Parker, political agent for the Southern Pacific Company; Justice F. W. Henshaw, of the California supreme court, who was later to become involved in an irregularity in signing an order granting Ruef a retrial, and still later to resign his justiceship under fire of serious charges of bribe taking; Warren R. Porter, who had just received the nomination for lieutenant-governor; Judge F. H. Kerrigan of the appellate court, who later was to concur in the order freeing Ruef and Schmitz from the indictment for extortion on which they had been convicted, and two or three other well-known political manipulators.

ferring and careful planning nearly a hundred men from various parts of the state met in Oakland on August 1, 1907, and organized the Lincoln-Roosevelt Republican League for the purpose of gaining control of the politics of the state. It was clear that so long as the state retained the old-time convention system the chances for eliminating the Southern Pacific were somewhat remote. What was needed, it appeared, was a direct primary law by means of which the people, instead of the bosses, could name the candidates. So they determined to organize the state and elect a legislature that would adopt such a law. In the 1908 state convention the league lacked only twenty-nine votes of control, but the machine was still able to use the steam roller mercilessly and gave the leaguers nothing.

This so aroused the fighting spirit of the independent group that they actually succeeded in sending an anti-machine majority to both houses of the 1909 legislature, and then proceeded—through lack of recognized leaders, organization and any definite plan of action—to allow the machine leaders to organize the legislature and largely dominate the session. They did, however, in spite of machine opposition, pass a direct primary law. It was not the law as originally planned, because compromises had to be made; but it was sufficiently workable to serve its purpose.

With this powerful weapon the Lincoln-Roosevelt League went vigorously into the work of perfecting a comprehensive organization of the entire state. When the time came for selecting a candidate for governor to go before the 1910 primaries, Francis J. Heney was the unanimous choice, but he was not sufficiently recovered in health to accept. It was then decided to put up Hiram Johnson. Johnson did not want to go into the fight, but finally consented and conducted such a campaign as had never before been heard of in the state. In an automo-

bile, with his son as chauffeur, he literally zigzagged the whole tremendous territory, visiting almost every hamlet, speaking sometimes twelve times a day, and announcing in every speech what the public wanted to hear but found hard to believe, "When I am governor, I am going to kick out of this government William F. Herrin, Walter Parker and the Southern Pacific Railroad Company." [19] The primary election, August 16, resulted in a sweeping victory for the league, Johnson winning by 45,000 votes over his nearest "regular Republican" opponent and carrying with him a majority of the progressive candidates for the other offices.

The progressives proceeded to reorganize the Republican party and write its platform. Meyer Lissner, leader of the "Good Government" forces in Los Angeles, was made chairman of the State Central Committee and a platform was drawn up even more liberal than that of the Lincoln-Roosevelt Republican League. At the general election on November 8, Johnson was elected by a margin of 22,000 votes over his Democratic opponent and a legislature was chosen that was safely progressive. The progressive forces had succeeded in gaining control of the state of California with an opportunity to make good one of the most elaborate specific programs of reform ever pledged by a political party.

Under the new régime the chances for getting the initiative, referendum and recall into the state constitution seemed much more hopeful. While these measures had been making great headway in the home-rule cities of California, they had not met with anything like an enthusiastic reception by the machine-controlled government of the state. Rather than attract unfavorable attention by violating the home-rule tradition, the bosses

[19] For a colorful description of Johnson's campaign see Burton J. Kendrick, "Johnson of California," *World's Work*, January, 1917, pp. 289-294.

could tolerate them in a few city charters; but to make them a part of the law of the state was quite another matter. Dr. Haynes had lobbied persistently but unsuccessfully in the interest of direct legislation at every session of the legislature from 1901. There were always a few independent votes to be had, but the machine vote would have nothing to do with such "freak legislation." Certain incidents had aroused the machine to the significance of these measures. An initiative vote had ruined their plans for blocking the Western Pacific Railroad from coming through Sacramento, and Walter Parker, just when he was really needed at the capital, was detained in Los Angeles in a futile effort to keep his mayor there from being recalled from office.

When the Direct Legislation League concentrated on forcing the initiative through the legislature in 1909, it was denounced as revolutionary and un-American. "After this," cried an old-guard senator, "will come the Referendum and Recall, and then God knows what." Coupled with machine opposition were the sincere and horrified protests of conservative property interests, always loyal to the traditional safeguards against majority interference with their special prerogatives. There were plenty of reasons, therefore, why no two-thirds vote to submit the amendment to the people would be forthcoming, and in spite of proposed compromises it was defeated in the senate, twenty for and fifteen against, and in the house failed to get beyond the committee.

The organization of the Lincoln-Roosevelt League had furnished a more hopeful medium through which progressives could work, but neither the 1907-08 nor the 1909-10 platforms of the league mentioned the initiative, referendum and recall. In fact, it was so busy concentrating on the ousting of the Southern Pacific by gaining control of the Republican party that it found time to advocate specifically very little in the way of a construc-

tive program. Certain definite legislative propositions and certain theories of government had become definitely associated with the movement, but what the organization would actually do when it came into power remained to be seen.

This insurgent group, having gained control of the Republican party in the 1910 primaries, proceeded to commit the party to the establishment of the policies for which they stood by placing them in the state platform. When direct legislation was in danger of being overlooked or left out in the framing of the platform, the ever-alert president of the Direct Legislation League expressed emphatically his objection to connection with a political movement which, having regained control of government for the people, failed to adopt measures that would make it possible for them to keep it under their surveillance. There was finally included as one of the planks "submission to the people of constitutional amendments providing for direct legislation in the state and in the county and local governments, through the initiative, the referendum and recall." [20]

Not for many years had the political situation appeared so hopeful to the public-spirited people of the state. The progressives had captured the Republican primaries, adopted a vigorous reform platform, and carried the elections. The Democrats had put forward a program containing most of the liberal principles sponsored by the progressives.[21] But political parties and legislative majorities had been known to become strangely forgetful of platforms on which they had ridden into power, and the energetic citizens who had backed this movement so successfully were determined that in this case there should

[20] Franklin Hichborn, *Story of the California Legislature of 1911*, Appendix, p. xxi.
[21] Franklin Hichborn, *op. cit*, Appendix xxvi.

be no opportunity for such a lapse to occur. So one week after the election the Republican State Central Committee held a meeting in San Francisco attended not only by members but by state senators, assemblymen, newspaper editors and citizens who had fought for progressive policies. The chairman was instructed to appoint committees to prepare for the coming legislative session, suggestions or measures in conformity with the platform pledges of the party and to report at a meeting of members of the legislature to be held in San Francisco during the last week prior to the opening of the session.[22]

Such procedure was almost unique in the annals of representative government, and the sponsors of the idea had some misgivings as to whether the legislature would see fit to respond to such a summons. Their minds were set at rest, however, when 62 out of 80 assemblymen and a proportionate number of senators appeared. Lincoln-Roosevelt leaguers came from all over the state to take part in the discussions. Democrats took as active a part as Republicans and the gathering took on the appearance of a non-partisan movement. All that was lacking was the unifying influence of a definite agreement and purpose and a vigorous leadership.

This leadership was immediately forthcoming in the person of Governor Hiram W. Johnson. In his campaign he had said a great deal about kicking the Southern Pacific out of politics and very little about any constructive policies. But his inaugural address was a clear-cut, constructive declaration, in the vigorous and picturesque expression for which the famous California statesman is

[22] A committee on direct legislation was one of the twelve appointed. State Senator-elect Lee C. Gates was chairman and among the other members were Dr. John R. Haynes, and Milton C. U'Ren, president and secretary respectively of the Direct Legislation League, and Judge John D. Works, shortly to be elected United States senator from California.

noted, of an administrative program that included practically all of the measures pledged by his party.

Running as the predominant note throughout Governor Johnson's entire address was his emphatically expressed belief in the right and the ability of the people to rule. This fundamental ideal of the nation-wide progressive movement had come to be a mere platitude as set forth by many politicians and quack reformers, but the governor was able to give it both meaning and direction. Using the menace of the Southern Pacific as the basis for his program, he declared it his first duty "to eliminate every private interest from the government, and to make the public service of the State responsive solely to the people."

But, he asserted, this was only a necessary preliminary to a constructive program. The people must be given the means by which they can protect themselves hereafter, the means by which they can accomplish further reforms, and "an admonitory and precautionary measure which will ever be present before weak officials, and the existence of which will prevent the necessity for its use." Then, he declared, everything possible will have been done in the direction of safeguarding the future and of perpetuating the theory of the people's right to rule.

Thus the initiative, referendum and recall came to be, in Governor Johnson's program, "the first step in our design to preserve and perpetuate popular government," and he strongly urged their submission to the people as constitutional amendments "at the earliest possible date," as "perhaps the greatest service that could be rendered our State." He admitted frankly that he did not believe these measures were "the panacea for all our political ills," yet they did give the people the power of action when desired and the means of protection when necessary. He pointed out that at the bottom of all opposition to the initiative, referendum and recall was the belief that

the people could not be trusted, and gave as the basis for his own high regard for these provisions his deep-rooted belief in popular government, and not only in the right of the people to govern, but in their ability to govern.

The recall, partly on account of the controversy that was stirring over the various uses to which it was proper to apply it, came in for special attention. He declared that if the solution rested with him, he would apply the recall to every official, administrative and judicial as well as political, and suggested that if the legislature believed in the recall, they make no exception in its application.[28]

In the legislature the initiative and referendum amendment was adopted after very little debate by a total vote in the two houses of 108 to 1; but the recall ran into delay at every stage of its consideration. Its progress was embarrassed more by the good intentions of its friends than by the obstructive tactics of the opposition.

It was around the recall of the judiciary that the real argument developed, both in committee and on the floor of the two houses. Although the 1910 platforms of both the Republican and Democratic parties had declared for the recall of all elective officers, before the meeting of the 1911 legislature strong opposition to the recall of judicial officers had developed among the progressives themselves. The committee on direct legislation appointed to serve for the Republican State Central Committee omitted the recall of judges from their original draft, but started the controversy by including all elective officers in the amendment presented at the meeting in San Francisco just prior to the convening of the legislature.

The reactionaries were delighted to sit back and let the progressives fight among themselves. In the hearings

[28] The full text of Governor Johnson's inaugural address can be found in Franklin Hichborn, *op. cit.*, 1911, Appendix, i-xvi.

before the senate and assembly judiciary committees both sides put up able men to represent them. Charles S. Wheeler, a progressive, presented the argument against the recall of judges. Francis J. Heney and Matt I. Sullivan, now entirely won over to the recall, urged the application of the recall to all elective officers.

The debate that took place between Heney and Wheeler attracted state-wide attention and brought out clearly the conflicting positions of the two factions. Wheeler agreed with Heney that the people had a serious grievance against the courts because of their usurpation of legislative functions and that decisions had been made, even by the Supreme Court of the United States, which warranted the removal of the judges making them. Where the two men differed was as to the method of removal. Wheeler contended that the constitutional provision for the removal of a judge from office either by impeachment or by concurrent resolution adopted by a two-thirds vote of each house provided sufficient means of control. Heney pointed out that removal by impeachment is impractical because of the length of time required, and that removal by concurrent resolution would be ineffective under a machine-controlled legislature such as California had had for many years.

The California Bench and Bar were divided in opinion, though the majority vigorously opposed the application of the recall to judges. Wheeler was supported by such men as United States Senator-elect John D. Works, who agreed with him that such a law would "degrade the judiciary and make it less honest, less fearless, less independent." [24] The Heney-Johnson viewpoint was backed just as vigorously by well-known jurists who saw in it not only no disadvantage to the judiciary but rather

[24] Senator Work's "righteous flop", as the *Los Angeles Times* designated it, so irritated the progressives that a resolution was introduced in the senate to recall him from the United States Senate, to which he had just been elected by the legislature.

the possibility of such advantages as lengthened terms of office.[25]

On the whole the situation did not look any too favorable for the recall with the inclusion of judges. Not only were such reactionary papers as the *Los Angeles Times* branding Heney's arguments as "demagoguery of the worst type" and contrasting "this spewing of intoxicated radicalism with the sane, patriotic and conclusive arguments of Wheeler," [26] but many less apoplectic conservatives, and numbers of progressives as well, were convinced that the line should be drawn at the recall of the judiciary. Governor Johnson, in a letter to Dr. John R. Haynes, January 17, declared that "there is grave doubt of our ability to have the Recall applicable to the Judiciary," but he was "inclined to think that our wisest course is to proceed with the amendment as it stands, and hereafter, if our weakness is too apparent, to accept a compromise."

While the outcome of the deliberations was in doubt, an action by the state supreme court recalled the scandals of the San Francisco graft prosecution and the questionable higher court decisions in the graft cases where convictions had been set aside, and influenced sentiment in favor of the judicial recall. Four of the seven justices signed an order for a rehearing that might have resulted in a retrial for Abe Ruef, who had been convicted and sentenced to fourteen years penal servitude at San Quentin. It was found, also, that one justice at least had signed the order for a rehearing without considering the briefs which had been filed in the case. The order was finally set aside on a technicality, but the damage had been done. The legislature talked investigation of the supreme court's conduct and the senate judiciary committee, by a ten to

[25] Curtis D. Wilbur and Judge Benjamin F. Bledsoe were leading exponents of this point of view.

[26] *Los Angeles Times*, February 4, 1911.

three vote, reported the amendment for the recall of all elective officers favorably to the senate.

The debate in the senate followed the same lines that it had taken in committee, but when the final vote came the amendment was adopted by a vote of thirty-six to four.

The only hope of the opposition now lay in what could be done in the assembly. After the most ingenious of obstructive parliamentary tactics had failed to prevent a favorable committee report, one final effort was made, on the floor of the assembly, to strike out the provision for the judicial recall. The opposition claimed that it controlled twenty-eight votes, one more than enough to defeat the recall amendment, which it threatened to use unless the recall of judges was dropped. An amendment to exclude from the recall provision all judges except those of the local justice courts furnished a test vote that disclosed only twenty on the opposite side. Other proposed amendments failed to get serious support, and when, on March 6, the final vote on the recall amendment was taken, it was adopted by a vote of seventy to ten.

"Probably never before," says Franklin Hichborn in his account of the legislature of 1911, "had a measure before the California Legislature been so thoroughly studied and considered," and this was especially true of the recall as it applied to judges. In the legislature interest had been so tense that every member of both houses voted for or against the measure. Throughout the state it had attracted such excited discussion and debate that the campaign for ratification gave promise of being vigorously contested. "Popular government in California," said E. A. Dickson in the *Los Angeles Express*, "is at last positively and permanently established. At least it is established so far as it can be by action of the Legislature. All that remains is for the people them-

selves to place their seal of approval upon what the state lawmakers have done." [27]

What the people would do was to be determined in a special state election called for October 10 to consider the twenty-three amendments to the constitution which constituted a major part of the work of the 1911 legislature. Many of them, such as the woman suffrage amendment, the initiative and referendum, and the provision changing the Railroad Commission from an elective to an appointive body and giving it jurisdiction over the utility corporations of the state, involved radical changes in important principles of government; but none of them received more attention or became the center of more violent controversy than the recall. Normally less favorably received than direct legislation, the conflict over the recall of judges had built up a vociferous opposition that saw hopes of its defeat.

It was unnecessary, almost impossible, for any voter in California to go without information on the subject of the recall. Although the election was not due till October, newspapers, bar associations, civic clubs, the Direct Legislation League, the governor, the legislature and numerous other interested organizations and individuals all began taking sides loudly and with enthusiasm early in the spring. The opposition very shrewdly concentrated its attack on the most vulnerable point, the recall of judges, and in this way hoped to weaken the case for the recall. Prominent visitors to California were called upon to state their views, especially on this aspect of the recall. Theodore Roosevelt, speaking before the Los Angeles City Club on March 22, brought a limited amount of comfort to the pro-recall faction by declaring that whereas the recall of judges was a sort of last resort when there was no other way of avoiding worse evils, he thought that conditions in California were such that there was no al-

[27] *Los Angeles Express*, March 8, 1911.

ternative to its adoption.[28] Woodrow Wilson, interviewed on the train a few weeks later, before he was fairly within the state, expressed his surprise at the importance attached to the issue and spoke somewhat less favorably of the idea. In his estimation the recall was not the remedy for a bad judiciary. The reform must come at the other end of the system and could be accomplished by the direct primary and honest elections. "The recall can secure immediate results on a bad judge, but I fear in getting quick results the fundamental good of a true judiciary would be sacrificed. The judiciary must have stability and this the recall might endanger." [29]

The intensive campaign for the adoption of the amendments opened the latter part of August. Champions for and against ratification held debates before civic leagues; newspapers devoted vast amounts of space to explanation of the various provisions and in their editorial columns supported or denounced them violently; orators, such as Senator Moses E. Clapp of Minnesota and W. S. U'Ren, father of direct legislation in Oregon, were imported from other states to address mass meetings; and Governor Johnson, with Dr. John R. Haynes, Francis J. Heney and others, stumped the state in automobiles from Siskiyou to the Mexican border advocating passage of the progressive measures.

The recall came in for more than its share of attention. All the standard arguments on both sides were once more set forth in the form supposed to be most alluring to the average voter. The shades of all the great legal commentators, Constitutional Fathers and interpreters of American ideals were invoked to prove the impracticability of pure democracy and the need for an independent judiciary, or the contrary; and echoes of all the orthodox bombast about "special privilege," "private interests,"

[28] *Los Angeles Record*, March 23, 1911.
[29] *Ibid.*, May 12, 1911.

"the tyranny of the majority" and "destruction of our representative form of government" reverberated from one border of the state to the other. Advertisements urging the people to "Vote Against the Recall Amendment" because, "if this amendment is adopted only demagogues will run for office, and to hold the public sentiment or clamor in their favor, judges and all officeholders will violate the oath of office in trying to serve two masters, God and the Mob," appeared beside appeals to "Vote for the Recall Amendment, it gives the people power to discharge dishonest officials."

The situation afforded unlimited range for Governor Johnson's rare talent for vituperation and for the ponderous satire of his pet aversion, the *Los Angeles Times*, which neither of them in any way neglected. Johnson fulminated against President Taft for violating the political liberty of Arizona by denying them the recall of judges, and demolished the anti-recall arguments of the enemy with adroit phrases that both convinced and entertained the huge crowds that flocked to hear him. If it was suggested that the recall would intimidate the austere judiciary, Johnson would thunder, "Cowards! My friends, you can't make a coward of a man by holding a pistol at his head; you can only demonstrate whether he is one." And in reply to the argument that judges subject to the recall "would keep their ears to the ground" from obsequious regard for the public's latest whim, Johnson would thrust back, to the delight of his listeners, "We would rather that the judges kept their ears to the ground than to the railroad tracks in California."

For the time, at least, the state seemed to have gone overwhelmingly progressive. Governor Johnson and his followers had captured the popular ear and the conservative forces were unable to meet his stirring challenge. Even the *Times* seemed to have lost its gift of personal invective, and its final editorial appeal on the morning

of the election sounded more like a lament than a hopeful prophecy.[30]

The results of the election more than fulfilled the hopes of the progressives. Twenty-two of the proposed amendments, including all of those vital to the reform program, carried. Woman suffrage, after its defeat had been proclaimed, finally carried by the narrow margin of 3,587 votes and polled the heaviest vote of the entire list. The second largest vote was given to the much-maligned recall, which carried by the largest majority of the twenty-three measures. Direct legislation received the third highest vote and carried by more than 3 to 1.[31]

The significance of the outcome depended on the point of view. The old guard kept up its spirits by indulging in cynical comments on the abolition of representative government and the likelihood of "legislative jamborees," but anxiously placed its hope in a supreme court decision that would restore the ancient landmarks. *La Follette's Weekly* expressed the sentiment of the victors in luxuriant language: "California has planted the banner of people's rule far afield. She has stormed the bulwarks

[30] "California is to pass judgment today on a proposed transition from the long-established representative form of government to a hybrid of democracy and autocracy." (On the one hand there was the initiative, referendum and recall and woman suffrage; on the other hand the substitution of many appointive officers for elective officers.) . . . "The whole situation confronting the voters is one of haste, of undue, fanatical eagerness to have the work approved before it has been studied." . . . "Woman suffrage should be defeated because it tends to unsex society and destroy the home." . . . "The initiative and referendum should be defeated because they are instruments of the turbulent few and their adoption means recurrent elections of frivolous character." "The recall should be defeated because it makes official and judicial cowards and destroys stability and independence." . . .

"A vote of 'NO' is a rebuke to those who would upset established representative government for whim or caprice or malice, and is a dignified demand for a constitutional convention if the organic law is to be overhauled." *Los Angeles Times*, October 10, 1911.

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	For	*Against*
Recall	178,115	53,755
Woman Suffrage	125,037	121,450
Direct Legislation	168,744	52,093

of The System and reduced them to ruins. In their place she has erected a structure of representative government, founded on truth, fashioned with democracy and gilded with righteousness, that will stand forever as a monument to the intelligence and might of the American electorate."

CHAPTER III

THE LAW OF THE RECALL

ANY analysis of recall procedure in California, because of the multiplicity of laws on the subject, is bound to be involved. Even the august supreme court of the state, exhibiting a certain petulance regarding the situation, has issued a warning to the legal profession in the following terms:

> Our complicated system of city government, which gives each city above a certain size power to adopt a charter for its own government, and our numerous statutes relating to and providing for the recall of elective officers, tend to create a great confusion on the subject, and when a decision of the court is resorted to for information, close attention must be paid to the particular city and particular law on which the decision is predicated; otherwise the legal profession is likely to be misled in regard to the construction of the particular law in controversy.[1]

The confusion exists because, to put the situation briefly, while most of the elective officials, and a few of the appointive officials, in the state are subject to recall, they do not come under the operation of any general provision. Instead of one recall law there are more than fifty. Each class of political subdivisions, moreover, must be covered by a specific recall provision to render its officials subject to this method of removal.

All elective state officials are subject to recall according to detailed procedure set forth in the constitution;

[1] Wright *v.* Engram, 201 Pacific 788.

which further authorizes the exercise of the recall in counties, consolidated cities and counties, cities, and towns, but leaves the procedure to be provided by law. This the legislature has done in two general statutes, one applying to holders of elective offices in counties, townships, and supervisor districts, and the other to elective officials in two hundred seventy odd incorporated municipalities of the state.

Also, acting under its general legislative authority, the legislature has provided in separate enactments for the recall of elective officers in irrigation districts, water storage districts, county water districts, metropolitan water districts, municipal water districts, and public utility districts.

The state constitution, furthermore, extends to counties, and to incorporated municipalities with populations of over 3,500, the authority to adopt charters for their own government. Thus they have the option of following the general state recall laws or of adopting their own. Forty-three of the forty-six freeholder-charter cities of the state have introduced into their charters recall provisions,[2] many of them widely divergent in form and method. Four of the five home-rule counties have followed the same policy, and the consolidated city and county of San Francisco has its own recall plan. Since the recall has been more generally and frequently used by cities than by other political areas, the law as they have developed it has unusual significance.[3]

[2] The three that have no recall provision in their charters are Albany, Piedmont, and Watsonville.

[3] Summary of Classes of Officials in California Subject to Recall:

1. Under the recall provisions in the constitution: All elective state officers.

2. Under the general statutes of the state: All elective officers of counties, townships, supervisor districts, municipalities, irrigation districts, water storage districts, county water districts, municipal water districts, public utility districts; all officers in metropolitan water districts.

3. Under special provisions of the freeholders' charters of the coun-

RECALL LAWS IN CALIFORNIA CITIES, 1903-1911

The home-rule cities of California constitute an interesting and valuable laboratory for legislative experimentation which never has been used more assiduously than in connection with the contentious law of the recall. Out of the experience of forty-four [4] cities there has developed such a variety of treatment of all the features of the law that it is difficult to think of any possible innovation still left untried. Not only have there been innumerable additions and changes of minor points, but in many cases the whole procedure has been revised or completely altered. While due in part to the desire to work out a plan that is fair to the official and guards against ill-considered action by the public, it also represents an attempt to keep one jump ahead of the stubborn and resentful public official who seeks to avoid untimely removal from office by resort to litigation and legal delays based on technical discrepancies in recall provisions.

The alacrity with which these cities seized upon this intriguing device of democracy was a convincing indication of its popular appeal. Between the introduction of the recall in Los Angeles in 1903 and the enactment of the state recall law for the use of all municipalities in 1911, twenty-five out of the thirty-one cities then under freeholder charters adopted recall provisions,[5] and Santa Rosa, one of the remaining six, though it did not adopt

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ties of Alameda, Butte, Los Angeles, and Tehama: All elective and appointive officers.

4. Under special provisions of the freeholders' charter of the consolidated city and county of San Francisco: All elective officers.

5. Under special provisions of the freeholders' charters of forty-three municipalities: All elective officers; all appointive officers in Los Angeles, Alameda (1906-1917), Santa Cruz (1907-1911); city managers in Compton and Long Beach; civil service commissioners in San Diego.

[4] This number includes the consolidated city and county of San Francisco.

[5] The six home-rule cities that failed to adopt recall provisions during this period were Grass Valley, Napa, Salinas, San Jose, Santa Rosa, and Watsonville.

the recall, demonstrated its interest in the idea by introducing into its charter of 1904 a unique plan for the removal of all elective officers by the council.[6] Since the passage of general recall legislation by the state fifteen additional cities have adopted municipal home rule, and all of the fifteen but the small cities of Albany and Piedmont have included recall provisions in their charters. Of the six home-rule cities that failed to take action before 1911 all but Watsonville have adopted the recall. Only ten of the first twenty-five, however, have kept their original provisions intact. The others have either revised or entirely changed their recall procedure, in several cases more than once.

While the original Los Angeles plan for the recall embodied all the essentials from which the varying schemes now in use in California have gradually evolved, it has

[6] According to the Santa Rosa plan public officials elected for definite terms, as well as appointive officials, held office only during good behavior and the grounds for removal included incompetency. City councilmen were charged with the duty of reporting cases of official unfitness, but provision was made for any resident of the city to lodge complaint. The council was entrusted with the functions of hearing charges, removing the guilty from office, and, in the case of elective officials, of appointing successors.

Section 32 of the charter provided that the council should have power:

> "To hear all charges that may be made by any resident of this city charging any officer or employee of this city with misfeasance or malfeasance in office, gross dereliction or neglect of official duty, or incompetency from any cause, such hearing to be heard within thirty days after the filing of such charge with the Council, and upon notice to the officer so charged when such notice can be given, and upon finding that such charge is true such officer or employee shall be removed from his office or employment and his successor shall thereupon be appointed by the authority having the appointive power if such office is filled by appointment, and if elective such successor shall be elected by the Council until his successor is elected and qualified. And if any member of the Council shall have knowledge or information that any officer has been guilty of misfeasance or malfeasance in office or in such employment, or incompetency resulting from any cause rendering them unfit to fill such office, it is hereby declared his duty to report the same at once to the Council, whereupon charges concerning the same shall be formulated by the City Attorney or the Council and filed with the City Clerk, and the same proceedings had thereon as provided hereinabove in this section. . . ."

been deviated from so much that there are now three quite distinct types of recall procedure. One group of cities adheres, with modifications, to the old Los Angeles provision. The constitutional provisions and general laws of the state follow a radically different principle which has influenced the provisions in over half of the cities, including Los Angeles. The remaining cities have composite plans, some of them very elaborate and involved, so varied that they are impossible to classify. It is doubtful whether the field of modern legislation presents a more interesting example of the rapid evolution of a law through comparative study of defects and means of improvement. More than fifty municipal and county "constitutional conventions," several state legislatures, and innumerable public officials, attorneys, and students of government have given the law of the recall their careful consideration with full opportunity to check up on one another's conclusions.

The Original Los Angeles Plan.—The main features of the first Los Angeles plan are as follows:

Officers subject to recall. The recall applies to "the holder of any elective office," with no mention of limitations or restrictions.

Initiation of proceedings. Recall proceedings may be initiated very informally by anyone by the framing of a petition containing a general statement of grounds for seeking the removal of the incumbent, and demanding an election for the choice of a successor.

Circulation of petition. Anyone, apparently, is eligible to circulate a recall petition, but only "electors entitled to vote for a successor" of the incumbent are eligible to sign. Each signer is required to give his place of residence, including street and number. A valid petition requires signatures equal in number to twenty-five per cent. of the entire vote cast at the last general municipal election "for all candidates for the office held by the person

whose recall is sought," but no limit is placed on the time that may be taken to secure them.

Filing, examination, and certification. The petitions are filed with the city clerk. The signatures need not all be appended to one paper but "one of the signers of each paper" must take oath "that the statements therein are true and the signatures genuine." The clerk is given ten days from the date of filing to verify the signatures from the "great register" of voters kept by the county registrar, and if he finds the petition "sufficient" he must submit it to the city council "without delay." If the petition is insufficient, ten days are allowed for its amendment, and the clerk then has an additional ten days to examine the amended petition. If it still lacks sufficient signatures he returns it to the person who filed it, without prejudice, however, to the submission of a new petition.

Calling the election. If the petition is sufficient, the council is required to provide for the holding of an election not less than thirty, and not more than forty, days from the date of the clerk's certification.

Provision for possible successor. No direct mention of nominations is made, but since the law governing other city elections is specified as controlling, the method is by petition. The person whose recall is sought, unless he requests otherwise in writing, becomes a candidate to succeed himself without the formality of nomination.

Conduct of election. The election is conducted in the same manner as other city elections. The candidate receiving the highest number of votes is elected and holds office for the unexpired portion of the term.

The first five cities to follow Los Angeles in adopting the recall deviated very little from the original plan. The one point which gave them serious concern was the percentage of signatures to be required for petitions. It was essential for the effective functioning of the recall that the percentage be not so high as to render it inoperative,

nor yet so low as to facilitate its misuse by an official's political opponents. San Diego and Pasadena concurred in the twenty-five per cent. required by Los Angeles; San Bernardino, slightly uncertain of entrusting such power to a twenty-five per cent. minority, increased the percentage to thirty; while Santa Monica and Fresno indicated their conception of the recall as a sort of last resort by requiring, respectively, forty and fifty-one per cent. petitions. Pasadena also made minor changes in the phrasing of certain points, that were significant because they marked the first attempt to eliminate vague phraseology and to introduce specific details for the purpose of avoiding obstructive litigation.[7]

To this point, the original recall plan was practically intact except for the variation in the percentage of signatures required on a petition. But in 1906 Alameda, the first city of the San Francisco Bay area to adopt the recall, approved a charter containing a recall provision that showed decided originality on the part of its framers. They included, for the first time, a clear-cut summary of the theory of the recall in the statement that "the term of office, elective or appointive, shall be limited to the good behavior of the holder thereof," and then proceeded to introduce the revolutionary innovation of providing for the recall of appointive as well as elective officials.[8]

[7] The signer of each paper who certified as to its validity was relieved from the possible embarrassment of perjury by the modification of the form of affidavit so that instead of being compelled to swear to the truth of the statements and the genuineness of the signatures on the petition, he merely states that all signatures have been made in his presence and are to the best of his knowledge genuine. By omitting the specific requirement that the city clerk check petitions from the "great register," a legal complication in which her next-door neighbor, Los Angeles, became involved in its first attempted use of the recall, was avoided.

[8] The provision for the recall of appointive officers followed the general requirements for the circulating, filing, checking, and certifying of petitions, but necessitated a different form of election procedure. The preëxisting plan for elective officials provided a means for determining whether the incumbent should be reëlected to complete his term of office or be superseded by another candidate who polled a higher vote.

The Alameda provision further involved several minor changes in recall procedure, a few of which are of sufficient significance to mention. As a safeguard against vague charges of invalid signatures it was provided that "each signature, the genuineness of which is not called in question by the sworn affidavit of its alleged owner shall be presumed genuine." To avoid the danger of chronic recall agitation or of holding an unfiled recall petition like a minority club over an official's head, it was required that the petition be filed within sixty days of the date of the first signature.

When Santa Cruz, in adopting a new charter six months later, followed the Alameda plan in detail, it seemed possible that its various innovations, including the recall of appointive officers, might become the basis for future municipal recall proceedings; but the next four cities, all of them taking action in 1907, again followed the Los Angeles plan. Long Beach copied it almost word for word except for the requirement of a forty per cent. petition. Vallejo, in spite of its location in the San Francisco Bay district, deviated from the Los Angeles law only to require that the signers of petitions give street and number "if any." The Riverside law was identical except that it permitted the city clerk to check petitions from "certificates of registration" as well as from the great register. Even San Francisco ignored the Alameda scheme and adapted the Los Angeles provision to the organization of its consolidated city and county government.

By the time that Santa Barbara came to consider a re-

A recall election for an appointive official could involve only the question of removal from office. Hence it was provided that unless the office was vacated before action was taken by the council, an election should be called and conducted as any other city election, but with the following form of ballot:

For the removal of ..... ☐
Against the removal of ..... ☐

This provision was never used and was dropped with the adoption of a new charter in 1917.

call amendment in the latter part of 1907, the supreme court of the state had held that the failure of the Los Angeles city clerk to check a petition from the record specified in the law had invalidated a recall election in that city. Moreover certain councilmen in San Diego, by litigation of certain undefined points in recall procedure such as the sufficiency of the statement of grounds in the petition, had evaded recall until their term of office expired. It was apparent that certain steps needed clarifying and defining, and this Santa Barbara proceeded to do by the introduction of a synthetic scheme. While the resulting provision was based on the Los Angeles plan, it used the Pasadena form of affidavit and the curious Alameda method of accepting the genuineness of signatures. It permitted the clerk to check not only from the great register but from certificates of registration and duplicate certificates of registration as well; included the declarations that the general statement of grounds for removal "is intended solely for the information of the voters and is not open to review"; and, further, that every step in recall proceedings except the sufficiency of grounds is subject to judicial review, but not to review by the council.

Berkeley was the next city to vary the recall procedure. It originated the idea of a "closed season" for recalls, to give the official a fair start, by prohibiting proceedings for three months after he takes office. But after this period of grace, if he incurred the wrath of the public and was recalled, retribution also included disqualification for one year from holding an appointive office. Berkeley, by depending upon an existing charter provision relating to the circulating and filing of petitions, happened upon an innovation which other cities have elaborated upon. This provision sought to guard against fraud by requiring that each signer use a separate certificate and swear to his signature before a notary public or verification deputy. Since this increased the difficulty of securing signers, the

number required was reduced to twenty per cent. of the total vote cast for the office of mayor at the last general election.

Continuing its effort to assure fair play to both sides, Berkeley provided that, in not more than two hundred words, the reasons for the recall should be printed in the public call for the election and that the person whose recall is sought might in the same number of words justify his course in office.

Of the three remaining cities which adopted the recall in 1909, Palo Alto merely took over the Los Angeles plan with Alamedan variations. The other two, however, made slight additions that indicated a well-intentioned vigilance in the detection of overlooked imperfections. The inhabitants of Richmond showed their intimate appreciation of the fact that the primary function of government is the protection of property by granting the right of circulating recall petitions to qualified voters or "taxpayers." The city fathers of Eureka established a safeguard against previously overlooked hazards by stating that neither judicial decree nor "act of God" should absolve the council from its obligation to call an election.

San Luis Obispo, the first city to take action in 1910, showed its admiration for the ingenious Berkeley scheme by appropriating it practically intact. Monterey, the last city to adopt the recall in that year, ignored all innovations and copied the Los Angeles law almost verbatim. But the remaining three, Modesto, Oakland, and San Francisco, displayed refreshing originality.

Thus far, despite the fact that seventeen cities had been experimenting with improvements to the Los Angeles plan, and had made innumerable minor changes and additions, there had been, except for the Alameda proposal for the recall of appointive officers, no radical departure from the original principle. It dawned upon the board of freeholders in

Modesto, however, that in spite of the widespread adoption and application of the recall idea, the specific question of whether or not an official should be recalled had never been placed before the voters. The existing procedure was merely a special election in which the popularity of the incumbent was weighed against that of such other candidates as chose to run for the office. In casting about for a scheme which would really carry out the recall idea, they hit upon the device of holding an election exclusively on the question of removal from office and, in case it was successful, of following it by the election of a successor. The ballot for the recall election was arranged as follows:

Shall.....be recalled? Yes ☐
Shall.....be recalled? No ☐

The choice of a person to complete the unexpired term followed the regular election laws of the city. Nominations, which contrary to previous practice, did not include the dismissed official, were by petition. In case no candidate received a majority, a second election was required.

San Francisco, about this time, decided to renovate the recall plan it had adopted three years previously. Although in 1907 a thirty per cent. petition had been regarded as dangerously low, the requirement now underwent a drastic reduction to ten per cent. of the vote for mayor, with a minimum and maximum of 7,000 and 15,000 respectively. It was recognized, however, that this might subject an official to constant annoyance at the hands of his political opponents; so for a second attempt to recall the same officer the number was doubled, and for a third it was tripled. Also, in order not to penalize an official for the mistaken judgment of a minority group of petitioners, it was stipulated that if he was sustained in office he should be reimbursed for legitimate campaign

expenses. Apparently the taxpayers feared too heavy a drain on the treasury, for in 1916 this section was repealed.

Most of the cities that had labored to improve the recall law had been content to concentrate their attention on a few points, but Oakland apparently did not believe in half-hearted reform. The recall provision in its charter does not leave a single major point of procedure unchanged. Even the terminology comes in for careful rephrasing.[9]

The delightful informality with which anyone could start circulating a petition is replaced by the requirement of a preliminary affidavit from the persons proposing the recall. This affidavit must contain a declaration of intention to circulate a recall petition, a statement of the reasons, limited to two hundred words, and the address of the signer. It is to be filed in triplicate with the city clerk, who must deliver one copy to the office of the person whose recall is sought, and one, by registered mail, to his residence. The official whose position is thus threatened has five days in which to present to his assailants a statement in which he must, in not more than two hundred words, set forth the virtues of his official career.

The petitions follow the individual certificate form introduced by Berkeley and must contain reasons for and against the recall, limited to two hundred words each.[10] The number of signatures required is only fifteen per cent. of the vote cast for mayor at the last mayoralty election; but there is a forty-day time limit after the preliminary affidavit for circulating and filing, and a thirty per cent. petition is necessary for a second attempt.

[9] For example, instead of merely declaring "any elective officer" subject to recall, the enactment specifies "any incumbent of an elective office, whether elected or appointed to fill a vacancy"; thus closing a possible legal loophole through which certain officials might escape liability.

[10] For a facisimile of an Oakland petition see *below*, p. 269.

These petitions must be presented in packages of two hundred and fifty to the city clerk, who is required to endorse the time of receipt on the petition and to begin checking immediately. For this he has the customary ten days, but fifteen days are allowed for amendment in case the number of signers is insufficient, and he must check the amended petition in seven days. In addition to notifying the persons submitting the petition of any insufficiency, he must designate the defects as to each individual certificate. To eliminate the uncertainty as to the right of a person to withdraw his signature, it is provided that any signer may withdraw his name, by submitting a verified revocation, at any time before the clerk "files" the petition and presents it to the council.

The petition may request either that a special recall election be held or that the question be voted on at the next general election. A special election must be called from fifty to sixty days after the clerk files the petition, but the petition remains in force, in case of delay, until the election is held.

The election proceedings vary considerably from previous practice. The Modesto plan of voting separately on the two questions of the recall and the choice of a possible successor was adopted; but instead of requiring two elections, Oakland combined the process in one election and on one ballot in this fashion:

(Reasons for and against the recall of A....
in not more than two hundred words.)
Shall A...be removed from the office of...by recall? [Yes ☐]
Shall A...be removed from the office of...by recall? [No ☐]
(Candidates for the position in case A is recalled. Vote for one.)

A ..... ☐
B ..... ☐
C ..... ☐
D ..... ☐

Candidates are nominated as in regular elections except for the extraordinary provision that the incumbent automatically becomes a candidate to succeed himself unless he requests otherwise in writing within five days after the clerk files the petition.

In case the vote favors the removal of the incumbent the second part of the ballot becomes operative. Each elector is supposed to vote for a succession candidate even if he is opposed to the recall. If no candidate receives a majority of all the votes cast, a second election is held from one to two weeks later. Ordinarily the names of only the two highest candidates appear on the ballot, but in case of a tie between the second and third the three are voted on and the choice is by a plurality. If a tie vote occurs in the second election, the council decides by lot.

The framers of the provision sought not only to perfect the procedure but also to guard against the evasion of duty by the officials charged with the administration of the law. Accordingly they stipulated that if the city clerk or the council "fails to perform any act or duty" involved in recall proceedings "they shall not draw salary during their further continuance in office," and the auditor "shall not audit or allow" any such salary claim to be paid.

In 1911 popular attention was centered on the recall through the campaign to place it in the state constitution, and consequently four more cities adopted recall provisions for the first time and three changed their old plans. Of the seven, Santa Cruz, Vallejo, and Sacramento modeled their laws on the Oakland scheme; Petaluma, Pomona, and Stockton patterned after the old Los Angeles plan; and Los Angeles abandoned its old plan for a more eclectic process.

Each of the three cities that emulated the Oakland plan made minor modifications. But Santa Cruz, in substituting the Oakland plan for the one borrowed from

Alameda, introduced a distinctly new and important idea. Instead of electing a successor to a recalled officer, the vacancy was to be filled by appointment according to the general charter provision. Here was a scheme that might help to discourage the "outs" from misuse of the recall provision.

While Pomona, Petaluma, and Stockton followed the general principles of the original Los Angeles law it was with a certain disregard for exact reproduction of detail that indicated other influences. The Pomona freeholders, for instance, evinced a certain discriminating familiarity with the ponderous Oakland provision by requiring triplicate affidavits to initiate petitions, and by providing for placing on the ballot arguments for and against the recall. They also introduced a touch of originality in stipulating that no second or subsequent attempt to recall an official could be instituted for a period of six months after the previous attempt, or at any time subsequently unless the petitioners first deposited a certified check for an amount equal to the cost of the last recall election in which that official was involved. If the recall is successful the check is returned; if it is not "said check shall be cashed and turned into the general fund of the city."

Los Angeles, having used its recall law twice, proceeded to give it a thorough overhauling. Numerous minor changes were made, such as the provision of a three-month period of grace before an officer became subject to recall, the lowering of the percentage of signatures from twenty-five to twenty, and the lengthening of the time for calling an election from thirty to forty days to fifty to sixty days from the date of the clerk's certificate to the council. The sufficiency of grounds for the recall was not to be subject to judicial review. Somewhat more original than these was the provision that both sides might print 2,000-word statements in justification of their positions

and have the city clerk circulate them with the sample ballots.

The city that had originated the recall did not stop with this mild revision, however. Two really significant changes in principle were introduced. The Oakland form of ballot, with its provision for a separate vote on the two questions of recall and filling the vacancy, was adopted; and with the extraordinary arrangement, likewise originated by Oakland, that the person whose recall is sought automatically becomes a candidate to succeed himself, unless he requests otherwise. He may thus be recalled by a majority vote but, in competition with several candidates, be reëlected by a plurality. The recall of all appointive, as well as elective, officers was also provided for. The adoption of this much controverted form of the recall was almost a novelty, as Santa Cruz, the only California city that had emulated this original feature of the Alameda law, had just discarded it. A defect in the Los Angeles provision for the recall of appointive officers rendered it inoperative, but this was corrected by an additional amendment in 1913.[11]

THE STATE LAW OF THE RECALL

The recall amendment to the California constitution adopted in 1911 provided definite procedure only for the recall of state officers. It authorized the recall of elective officers in certain political subdivisions, however, "under such procedure as shall be provided by law." The framers of this amendment, with the fertile background of the experience of twenty-five California cities, evolved a comprehensive plan which embodied, with a minimum

[11] The new law called for signatures to recall petitions equal in number to twenty per cent. of the total vote cast at the last general municipal election for all candidates for the office of the person whose recall is sought. As this is inapplicable to appointive officers the 1913 amendment changed the basis for calculation to "all votes cast for the office of mayor."

of needless detail, the most practical features of a number of different local laws.

The constitutional provision allows the recall of any elective state officer by the voters entitled to vote for his successor. He must have held office for six months, however, before proceedings can begin, and in case the election fails he is entitled to another six-month period of grace before proceedings can be reinstituted. The character of the term of office in the state legislature necessitates the special provision that proceedings may be instituted against a legislator at any time after five days from the convening of that body. If an attempt to recall an official is unsuccessful, he is reimbursed by the state treasurer for his election expenses.

To recall an officer there must be filed with the proper authority a petition demanding the recall and giving the reasons for the demand, which reasons are not subject to review. If such officer was elected by the state at large the petition must be signed by at least twelve per cent. of the entire vote cast at the last preceding election for all candidates for the office; and this must include one per cent., calculated on the same basis, in each of not less than five counties. In case he was elected from a district, the number of signatures required is twenty per cent. Any elector is qualified to solicit signatures in his own county, and upon filing the petition must make affidavit stating that all signatures were made in his presence.

The petitions are filed with and checked by the clerk or registrar of voters of the city or county in which they are circulated. These officials certify the petitions to the secretary of state who either returns them for supplementing, or, if they are sufficient, presents them to the governor, who fixes a date for the election. Twenty days are allowed for checking, forty days for supplementing

insufficient petitions, ten days for rechecking, and the election must be called sixty to eighty days from the date of certification to the governor. If an officer resigns any time after the filing of a petition, the election is held nevertheless, and a successor is chosen.

The election is conducted like other state elections, and nominations for the possible vacancy are made by petition and must be filed twenty-five days before the election. The officer whose recall is sought cannot be a candidate to succeed himself. The form of ballot, which submits both the question of the recall and the choice of a successor, follows that first used by Oakland. This includes the requirement that 200 words for the recall and 300 words, if desired, against the recall shall be printed on the ballot. To avoid misuse of the double form of ballot, the law stipulates that no vote for a successor shall be counted unless the elector also voted on the question of the recall. If the official is recalled, his successor serves for the unexpired term.[12]

General Statutes for the Recall of County and Municipal Officers.—In addition to the recall amendment submitted to the electors for ratification, the 1911 legislature passed two general statutes, one of which granted the power of recall to municipalities and the other to counties. Neither of the measures, however, was given the careful consideration accorded the amendment.[13]

These two laws followed rather closely the principles of the recall amendment, but they omitted certain essential details necessary to make them fully effective. The county recall law failed to provide for the removal of officials in township or supervisor districts. The act pro-

[12] Constitution of California, Article XXIII, Section 1.

[13] Franklin Hichborn, *Story of the California Legislature of 1911*, pp. 139-140.

viding for the recall of municipal officers made a similar omission through its failure to furnish procedure for the recall of officials elected by wards or districts.

The special session of the legislature, later in the same year, amended the county law [14] and adopted a new enactment to replace the defective provision for the recall of municipal officials.[15] The new laws corrected the defects and made certain points more specific, but left the general principles of the original statutes unchanged. Also they were made applicable to officials then in office. As these acts have been used more widely and frequently than any other recall law in California, their provisions are of unusual significance. A comparative outline of their main features is given below.

DIGEST OF GENERAL STATUTES GOVERNING RECALL IN COUNTIES AND CITIES

Procedure	Counties, Supervisor Districts, Judicial Townships	Municipalities
Officers Subject to Recall.	The holder of any elective office, after he has been in office six months.	do.
Initiation of Proceedings.	The framing of a petition demanding the election of a successor to the person sought to be recalled, including statement of grounds which is solely for the information of the electors. One petition is sufficient for the recall of one or more officers.	do.
Securing of Signatures.	The petition must be signed by electors entitled to vote for a successor, equal in number to twenty per cent. of the entire vote cast at the last general election for all candidates for the office. Each separate paper must bear the affidavit of a qualified elector that the signatures were made in his presence and are genuine.	The same, except twenty-five instead of twenty per cent.

[14] California Statutes, 1911. Extra Session, p. 122.
[15] California Statutes, 1911. Extra Session, p. 128.

DIGEST OF GENERAL STATUTES GOVERNING RECALL IN COUNTIES AND CITIES—*continued.*

Procedure	Counties, Supervisor Districts, Judicial Townships	Municipalities
Filing, Examination, Certification.	The petition must be filed with the clerk or registrar of voters, who is allowed ten days for checking.	do.
	If insufficient, ten days are allowed for amending.	do.
	Ten days are allowed for checking amended petition.	do.
	If insufficient, petition must be submitted to the board of supervisors "without delay."	to "legislative body."
Calling of Election.	Board must call election 35-40 days from date of certification; but may postpone it to any general election occurring within 60 days. Election must be held even if vacancy occurs after filing of petition.	do. except called by "legislative body."
Provision for Possible Successor.	By election. Nominations are made according to general laws, except that there shall be no party designation. Incumbent cannot be a candidate to succeed himself.	do.
Form of Ballot	RECALL BALLOT (Two hundred words for and against recall) Shall.....be recalled from the office of ..... Yes ☐ Shall.....be recalled from the office of ..... No ☐ Names of Candidates .....☐ .....☐ No ballot for a candidate is counted unless the elector voted on the question of the recall.	do.

The recall laws of the state stand as adopted by the special session of the legislature of 1911. All attempts to revise them have failed, but several laws have been enacted to guard against the fraudulent use, not only of the recall, but of the initiative and referendum.[16] The corrupt elements against which direct legislation was aimed sought immediately to appropriate these devices for the promotion of their own purposes. Such misuse involved especially misrepresentation and fraud in the circulation and signing of petitions. Important acts of the 1913 legislature were held up under referendum petitions that contained thousands of forged signatures. In 1914 scandalous recall proceedings resulted in the removal from office of Senator Grant because of his opposition to the underworld interests of San Francisco.[17]

Such abuses of direct legislation led to vigorous action by the legislature of 1915 to prevent their recurrence. Several proposals to change recall procedure, such as the holding of separate elections on the questions of recall and the filling of resulting vacancies, were discarded in favor of imposing severe penalties for the fraudulent use of the recall, initiative, and referendum.

One measure made it a felony, punishable by imprisonment for not less than one nor more than fourteen years, for any person to subscribe a fictitious name, or to forge a name, to any initiative, referendum, or recall petition, or to any nominating petition.[18]

A second enactment sought to guard against misrepresentation and fraud in the circulation of petitions. Under this provision it is unlawful:

(1) For anyone circulating, or directing the circulation of, a petition, to misrepresent it to any person who signs,

[16] For an account of the enactment of these laws and of the scandals that led to their adoption see Franklin Hichborn, *Story of the California Legislature of 1915*, pp. 101-108.

[17] See pp. 275-279 for details of the Grant recall.

[18] Penal Code, Sec. 472a. See also Sec. 52.

desires to sign, is requested to sign, or make inquiries about it.

(2) For any person knowingly to spread any false statement concerning any petition for the purpose of obtaining signatures.

(3) For any person to file a petition known to him to contain false or fraudulent signatures.

(4) For any person to circulate or cause to be circulated petitions known to contain false, forged, or fictitious names.

(5) For any person to make any false affidavit concerning a petition or the signatures appended thereto.

(6) For a person knowingly to sign his name more than once to a petition, or to sign knowing himself not to be qualified to sign.

Any violation "is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by a fine not exceeding five thousand dollars, or by both." [19]

A third law provided that only an elector who is a registered qualified voter at the time he signs the petition shall be entitled to sign, and sought to guard against the violation of the provision by requiring that "such signer shall at the time of signing affix thereto the date of such signing." [20]

THE RECALL IN OTHER POLITICAL SUBDIVISIONS

The recall amendment to the constitution and the two general recall statutes just considered, while they provide for the recall of state, county, township, supervisor district, and municipal elective officers, leave officials in a number of political divisions of the state outside of their operation. No official is subject to recall unless he

[19] Penal Code, Sec. 64b. See also Secs. 61 and 64.

[20] Political Code, Sec. 1083a. For a discussion of the litigation that has arisen over this provision, see *below,* pp. 332-333.

comes within the provision of some special statute. While the legislature has failed to provide for the recall of officials in a number of such areas,[21] it has included in enactments establishing certain types of water districts, irrigation districts, and public utility districts, provisions for the recall of their elective officials.

Irrigation Districts.—The California Irrigation District Act was amended in the extra session of the legislature of 1911 to provide for the recall of the holder of any elective office of any irrigation district.[22] The provision follows the general recall laws of the state with such slight modifications as are necessary for conformity with the political organization of irrigation districts. The recall petition is filed with the secretary of the board of directors and it is the board which calls the election.

Municipal Water Districts.—The Municipal Water District Act was amended in the same session of the legislature to permit the recall of "every incumbent of an elective office" whether elected or appointed, "in accordance with the recall provisions of the general laws of the state with reference to municipal corporations." [23]

County Water Districts.—The legislature of 1913, in adopting a County Water District Act, included the provision that every incumbent of an elective office is subject to recall by the voters of the district "in accordance with the recall provisions of the general laws of the state applicable to officers of counties." [24]

Water Storage Districts.—The California Water Storage Act adopted in 1921 contains a provision for the recall "of the holder of any elective office of any district,"

[21] The courts have held that members of boards of education in cities whose freeholder charters contain recall provisions are subject to recall. For discussion of this point see *below*, pp. 318-319.

[22] Sec. 28½. California Statutes, 1911. Extra Session, p. 135.

[23] Sec. 7. Approved December 24, 1911. California Statutes, 1911, Extra Session, p. 100.

[24] California Statutes, 1913, p. 1049.

which is essentially the same as that in the Irrigation District Act.[25]

Metropolitan Water Districts.—The legislature of 1927 passed a Metropolitan Water District Act, primarily to permit the cities of Southern California to coöperate in the building of an aqueduct to secure a domestic water supply from the Colorado River. This law furnishes the most recent addition to the state law of the recall in its provision that, "Every incumbent of any office of a metropolitan water district formed hereunder shall be subject to recall by the voters of such municipal utility district, in accordance with the recall provisions of the general laws of the state with reference to county officers." [26]

Public Utility Districts.—Under the Public Utility District Act of 1915 providing for the incorporation of such districts by municipalities and unincorporated territory; [27] the Municipal Utility District Act of 1921; [28] and the Public Utility District Act of 1921 providing for the incorporating of such districts in unincorporated territory; [29] every incumbent of an elective office is subject to recall by the voters of his district in accordance with the recall laws of the state with reference to county officers.

RECALL LAWS IN HOME-RULE COUNTIES

The counties of California have been more backward than the cities in availing themselves of the home-rule privileges granted under the constitution. Only five of the fifty-eight counties of the state have adopted freeholders' charters.[30] Four of these five make specific provision for the use of the recall, while the fifth, San Ber-

[25] California Statutes, 1921, p. 1727.
[26] California Statutes, 1927, p. 694.
[27] California Statutes, 1915, p. 866.
[28] California Statutes, 1921, p. 245.
[29] California Statutes, 1921, p. 906.
[30] Los Angeles (1913), San Bernardino (1913), Butte (1917), Tehama (1917), Alameda (1927).

nardino, provides merely that all county officers "may be removed from office in the manner provided by law."

The charters of Los Angeles and Alameda counties contain detailed procedure for the recall, not only of elective, but also of appointive officers. The Los Angeles charter, adopted in 1913, includes a recall provision that follows, except in the matter of percentage of signatures, the main features of the general law of the state relating to the recall of elective officers in counties. Instead of the flat requirement of twenty per cent., based on the vote cast for "all candidates for the office" at the last general election, the number is placed at fifteen per cent., based on the vote for governor, for county officers; and at twenty-five per cent. for district officials. The decidedly uncommon provision that appointive officers may be recalled extends to the classified service, and includes the unique arrangement that before a petition can be filed for the recall of such an official a written complaint must be presented to the civil service commission requesting his removal, and the commission given twenty days to act. Alameda county, in adopting its charter fourteen years later, took the Los Angeles law, including the arrangement for the recall of appointive officers, as its model.

The counties of Butte and Tehama sought to embody the same recall principles in their charters by the declaration that the laws of the state should control. The Tehama county charter provides that "all elective officers and appointive officers shall be subject to recall as provided by law." The Butte county charter states more explicitly that "the holder of any elective or appointive county or township office, his deputies or assistants, shall be subject to removal from office by recall in the manner provided by the general laws of the state as applicable to counties and townships." Since there is no general

statute covering the recall of appointive officers, the stipulation for their removal by this procedure is of doubtful effectiveness.

MUNICIPAL RECALL LAWS SINCE 1911

The inclusion of the recall in the California constitution and the enactment of general recall laws did much to standardize recall procedure throughout the state, but did not do away with the zeal of home-rule cities for further experimentation. For while the recall principle had finally met with general acceptance, many of its exponents believed that both general laws and charter provisions for the recall were still far from perfect.

Recall provisions, because of the bitterness their use sometimes engendered, were peculiarly susceptible to criticism. The method of soliciting signatures furnished one of the chief grounds for complaint. Solicitors were sometimes guilty of misrepresentation, and frequently the person solicited, instead of taking time to read the petition, signed it to avoid being further bothered, or out of sympathy for the circulator, who was paid perhaps ten cents a name. It was contended, consequently, that few names were signed in a spirit of good faith and sincerity. A second major criticism was directed against certain provisions that were thought to place the incumbent and his friends at a disadvantage with their opponents. It was held to be especially unfair that an officer chosen by a majority of the voters could be compelled to stand for reëlection by the petition of a ten or twenty per cent. minority. Objection was made, moreover, to obscuring the merits of a recall proposal by mixing it with a political campaign for the choice of a successor. There was danger that in this way the real issue would be lost sight of. These, as well as other controverted points, have in recent years taxed the ingenuity of numerous boards of

freeholders; and have given rise to several unique developments in recall law.[31]

For any city that has contemplated the adoption of a special recall law in the period since 1911, there has been an embarrassingly varied assortment of models from which to choose. If a city's taste ran to austere simplicity there was the old Los Angeles plan; if it had the desire for a process more ostentatious but still practical and compact, there was the general law of the state; while if a city inclined toward something decidedly rococo, with an abundance of ornamental details, the Oakland plan could hardly be surpassed.

San Rafael, the first city to take action after the recall had been made a state policy, rejected the substantial virtues of the state plan in favor of the intricate magnificence of the scheme originated by Oakland. Another admirer of the Oakland arrangement was Alhambra, a Southern California town which apparently had no patriotic compunctions about importing legislative ideas from the alien North. It patterned the recall provision in its charter of 1914 after Oakland, with certain minor additions and changes; but apparently was so diverted by the glamor of triplicate affidavits, individual certificates, and similar ingenious devices, that it neglected to provide any method for the choice of a successor. The law was inoperative, therefore, until the adoption, in 1926, of an amendment that supplied the deficiency.

Bakersfield and Long Beach swung to the opposite extreme in drafting recall provisions for their new charters this same year. The former, in adopting its first recall law, displayed a discriminating conservatism by following the old Los Angeles plan with but two important changes, one to give recall proceedings official recognition from the outset and the other to expedite the

[31] For a contemporaneous criticism of recall laws see William J. Locke, *Pacific Municipalities*, November, 1912.

process. Electors who wished to initiate a recall were required to make affidavit and secure official blanks from the clerk. Petitions had to be circulated and filed within thirty days of the date of the affidavit. The latter discarded the old Los Angeles plan in favor of a very compact scheme which provided for voting exclusively on the question of the recall and left any resulting vacancies to be filled by appointment.

The sweeping criticisms that had been made of existing recall law were taken most literally by the small city of Napa, the fourth of the group of municipalities that took action on the recall in 1914. So shrewdly did the resulting provision guard against the supposed defects that permitted misuse of the recall, that, while it did include valuable new features, it largely nullified the use of the recall for any purpose whatsoever so far as Napa was concerned. Under this law it is only during a limited open season, "not less than sixty and not more than one hundred eighty days, prior to any general municipal election," that public officials become subjects for recall. To eliminate the complaint that recall proceedings continue in unofficial, and sometimes irresponsible, hands until the completed petition is filed with the city clerk, it is provided that to initiate a recall, from five to ten qualified electors must file with the clerk a request, verified as to the genuineness of the signatures by the affidavit of one of the signers, that a petition calling for the "declaration of a vacancy" in a specified elective office, be opened for signing. The unusual thing about this petition is that it is not to be circulated, but must remain for signing "in a conspicuous place" in the city clerk's office. Since no person is allowed to solicit for signatures in the office, the idea apparently is that the aroused citizens will make their way voluntarily, in large numbers, to the city hall for the express purpose of affixing their signatures to this document. If the number is equal to sixty per cent. of

the total registered vote, the office is declared vacant without further formalities. If it ranges between twenty-five and sixty per cent. an election is called to decide, not whether ..... shall be recalled, but whether a vacancy shall be declared in the office of ....., a delicately impersonal method of avoiding injury, as far as possible, to the feelings of the victim. When one considers that the percentage of signatures required is based on the total registration instead of upon the half of that number that actually takes the trouble to vote, it is evident that Napa officials are not likely to be troubled by the recall in the hands of small minorities. If for some extraordinary reason an attempted recall should progress as far as an election, the provision that any resulting vacancies are to be filled by appointment permits complete concentration on the question of "declaring a vacancy."

It was a board of freeholders of Alameda in 1906 that exhibited the first real originality in amending the law of the recall. Consequently, when a new board met in 1917, there was reason to believe that something rare and different in recall law might be forthcoming. The finished product was a marvel of legislative ingenuity that far outrivaled any previous attempts, for such involved plans as those of Oakland, San Rafael, and Napa were used merely as points of departure, and the composite result interspersed with previously unthought-of technicalities.

It is no light matter to promote a recall in Alameda. The first act on the part of any disgruntled elector sets highly complicated official machinery in motion, and from the initial step to the conclusion of proceedings the action must move with perfect precision on a carefully arranged schedule and with the most punctilious observance of exact and minute detail.

Any dissatisfied citizen, to instigate a recall, must draw up a formal declaration of intention in which he is re-

quired to explain, in not over two hundred words, why he seeks the specified official's removal from office. This succinct declaration, with the names and addresses of himself and his collaborators verified by affidavit, must be filed in duplicate with the city clerk, and the sincerity and good faith of their intentions manifested by the advance payment of a $25.00 fee which helps defray the expense of printing and other incidentals.

Immediately upon the receipt of this notification, the city clerk's official functions become complicated and remain so for the duration of the proceedings. He must rush a copy of the declaration to the assailed official, either in person or by registered mail. This individual has five days in which to contrive and file in duplicate with the city clerk, a dissertation, in not more than two hundred words, upon his official virtues.

The preparation of the petition blanks follows, and for this painstaking duty the clerk is allowed ten days. The law prescribes the form to be adhered to with such meticulous care, even as to the size and style of the type, that the only discretionary power left to the clerk is the selection of a careful printer. This petition, reproduced below, deserves special attention, not merely because of its precise phrasing and arrangement, but because it introduces the distinctly new and unique idea of permitting the electors the option of signing for or against the recall.

TO THE COUNCIL OF THE CITY OF ALAMEDA

PETITION FOR OR AGAINST RECALL

Of _____ (Name in full; printed in 12 pt. blackface type.)

As _____ (Give name of office in 12 pt. blackface type.)

Reasons for recall.

(Here insert reasons contained in affidavit for recall.)

Reasons against recall.

(Here insert reasons against recall, as contained in answer.)

I, the undersigned, certify that I am a qualified elector of the City of Alameda, State of California; that I have carefully read the foregoing reasons both for and against the recall of said officer and have signed below in accordance with my convictions; that I am not at this time a signer of any other like petition;

That I favor the recall of _____ (name of officer) _____ (name to be in 12 pt. black-face type) and petition the council forthwith to submit the question to vote of the electors.

(Signed) _____

Address _____

(Nine additional lines and addresses.)

That I am against the recall of _____ (name of officer) _____ (name to be in 12 pt. black-face type) and oppose the submission of the question to the vote of the electors.

(Signed) _____

Address _____

(Nine additional lines and addresses.)

VERIFICATION DEPUTY'S AFFIDAVIT

_____ being duly sworn, deposes and says: I am the person sworn as a verification deputy. I have personally circulated the above petition. I have not prevented any person from signing this petition either for or against the recall. All the signatures appended were subscribed in my presence. To the best of my knowledge and belief the signatures are the true names and signatures of the persons signing; and no signature has been erased, changed or defaced.

(Signed) _____

Verification Deputy.

Subscribed and sworn to before me this _____ day of _____, 191__

_____

Notary Public.

It seemed only proper that such petitions be circulated in a manner befitting their pretentious form. Accordingly the clerk is authorized to swear in for this purpose a special class of public officers known as verification deputies. A verification deputy is any qualified elector, other than a city official or employee, sufficiently desirous of circulating a recall petition to take oath:

(*a*) that he will not make untruthful or misleading statements regarding the proposed recall,
(*b*) that he will not prevent or hinder any person from signing the petition,
(*c*) that he will not threaten, bribe, or use improper means in soliciting signatures,
(*d*) that he will not permit these acts to be done by others. (As to the degree of violence he is entitled to employ in carrying out this last sworn obligation, the law fails to declare.)

Upon compliance with these modest requirements the deputy is ready, upon the payment of one cent each, to receive his allotment of petition blanks. As a further safeguard, the clerk must take a receipt from each deputy specifying the serial number of each blank in his possession. Since it is a misdemeanor not only to violate his sworn obligations, but to fail to return any of the petition blanks entrusted to him, the harried verification deputy must function in a condition of terrified suspense until the ordeal is over and the precious documents properly sworn to and safely out of his hands.

The solicitation of signatures is not permitted to drag on interminably as under the majority of California laws. Within fifty days of the filing of the original affidavit all the petitions must be in the hands of the clerk. He endorses on them the date of receipt and starts examination immediately to ascertain whether "they conform in every particular" to the requirements. Some of the signers,

meanwhile, may have changed their minds; and any such are given the privilege of having their signatures canceled, at any time before the petition is finally certified by the clerk, by filing with him "verified revocations." But at the zero hour "of five o'clock in the afternoon of the tenth day after the expiration of the fifty-day period provided for in section twenty-five of this chapter he shall attach to such petitions his certificate showing the result of his examination, which shall be conclusive. He shall endorse his finding on said petitions and shall present the same to the council at its next regular meeting."

If the officer whose recall is sought does not resign within five days after the filing of the petition by the clerk, the council must consider the question of a special election. If the total of signatures favoring the recall exceeds the total opposed, by a number equal to ten per cent. of the highest number of votes cast for a councilman at the last general election, the council must cause a special election to be held from forty to sixty days after the filing of the petition.

The Alamedans evidently had taken to heart the criticism against confusing the question of recall with a political campaign for the election of a successor, for they provided that the election be conducted solely on the question of removal from office and that any ensuing vacancy be filled by appointment. In these arrangements there is no relinquishing of precaution against either the stupidity or the venality of both officialdom and electorate. Sample and official ballots must contain the reasons for and against the recall, and the clerk must appoint as a canvassing board "three disinterested electors" who are required to take the constitutional oath of office before they take up their duties. No possible contingency in the outcome is overlooked. If an official is recalled, the mayor appoints his successor. If the removed official happens to be the mayor himself, the duty falls to the

remaining councilmen. If a majority of the council is recalled simultaneously, their successors are chosen by a special board composed of the police judge, the auditor, and the treasurer. In case a recount of the votes is necessary the law of the state is to govern. It is hardly necessary to add that under this law there has never been a successful attempt to recall an Alameda official.

Tendencies in Recent Years.—Two distinct influences are discernable in practically all the recall laws adopted by home-rule cities in recent years; the procedure standardized by the general laws of the state, and the variations introduced through the experimentation of a small group of non-conforming municipalities. Such cities as San Rafael, Napa, and Alameda made a definite contribution to the law of the recall in emphasizing the possible desirability of three fundamental changes in procedure. First, the idea of requiring official recognition for the initiation of recall proceedings by some form of declaration of intention was an improvement over the haphazard, unsupervised scheme that formerly prevailed. The ordinary method of securing signatures to petitions, moreover, whether for a recall or any other purpose, has always been a matter of controversy because of the opportunity for misrepresentation and the heedlessness of the average elector. Consequently the alternative schemes of circulation by sworn verification deputies or of requiring the posting of petitions in a public place where they can be signed without direct solicitation are well worth consideration. That the recall should be used, as it sometimes has been by defeated political factions, as a short-cut back to office, was never intended; and the filling of vacancies by appointment is an interesting attempt to free recall elections from such petty political squabbles.

Now that this small group of cities, in its experimentation with recall law, had suggested alternatives to each one of the controverted principles in the established pro-

cedure, it remained for some city to mold them all, in practical fashion, into one charter provision. Salinas was the first to do this, in a charter adopted in 1918. The resulting plan, while it embodies most of the constructive amendments to recall law since the adoption of the original Los Angeles provision, contains little, if any, unnecessary and cumbersome detail. Mr. G. A. Daugherty, president of the board of freeholders that was responsible for the plan, has indicated, in recent correspondence on the subject what their attitude and objectives were. "Many of our members," he says, "felt that the recall was too easy. While it was a good provision and a provision they did not wish to take from the people, yet they felt it was too often used without reason, and placed a considerable expense upon the taxpayers; so a discussion took place as to how this evil, as they termed it, could be offset in some way without depriving the people of the right of recall."

Long Beach, attempting for the third time to formulate an ideal recall provision, in 1921, made the same generous use of recent innovations, and in 1923 the city of Visalia took over the Salinas plan practically intact. All three of these cities followed the scheme of requiring a written request or declaration of intention to initiate a recall; all of them required that the petition be placed in the city clerk's office for signing; and all three provided that resulting vacancies be filled by appointment. Salinas and Visalia permitted signing for and against the recall, while Long Beach, on account of its larger population, established the mild requirement of a ten per cent. petition favoring the recall. Long Beach took one more unorthodox step, moreover, in arranging for the recall of city manager. The immediately subsequent use of this section of the law led to a somewhat spirited controversy as to its desirability; but the omission of this cherished item from still other attempts at drafting a perfect re-

call provision was partially responsible for the defeat of a new charter in 1924, and again in 1927.

This experimentation, however, by no means nullified the influence of the state law. San Diego discarded its old law in 1915 for a new one which followed the general statutes with only minor alterations. In a separate amendment this city attempted an indirect check on appointive officers by providing, ironically, not for their recall, but for the recall of the civil service commission which appoints them. San Jose's claim to distinction lies in its initiation, in the adoption of a law closely following that of the state, of a prohibition against the payment of compensation to the solicitors of signatures. Los Angeles in adopting a new charter in 1924 continued to follow the general provisions of the state, but still included the recall of all appointive officers and the strange provision that permitted an official recalled by a majority, by allowing him to become a candidate to succeed himself, to be re-elected by a plurality. Santa Clara, in adopting a charter in 1927, took the state law as its pattern but made certain omissions that may handicap its operation.

Eight cities,[82] in adopting or changing recall provisions since 1920, saved themselves the trouble of drafting a special law by making the recall law of the state, as it applies to cities, a part of their charters. Only one of this group, Compton, made any noteworthy addition. This city provides for the recall of the city manager, decreases the number of signatures required to twenty per cent., and makes a recalled official ineligible to any city office for a period of five years.

The seven remaining cities to take action on the recall during the last few years have followed the general law of the state with certain discriminating modifications as

[82] These cities are Fresno (1920), Sacramento (1920), Glendale (1921), Chico (1921), Compton (1924), Inglewood (1926), Santa Barbara (1926), Pacific Grove (1927).

to the method of securing signatures to petitions and the filling of vacancies. Grass Valley adopted a plan in 1921 that followed the provisions of the state law with the exception that it provided for the filling of vacancies by appointment. San Mateo (1922) and Burbank (1927) make the state law as it applies to municipalities one of their charter provisions, but with the specification that vacancies be filled by appointment. Tulare (1922), Santa Rosa (1922), Monterey (1925) and Porterville (1926) likewise depend on the law of the state; but in addition to the exception of filling the vacancies by appointment, they debar the circulation of petitions. To render them readily available for signing, however, it is provided that instead of being left in the city clerk's office, they be located in three public places.

Twenty-five years of municipal experimentation with recall law has resulted in no agreement as to what constitutes the ideal recall procedure. The present tendency toward following the general law of the state by no means meets the existing criticisms. But with the wealth of material that is available in the varied recall provisions of forty-four cities, some ingenious board of freeholders may eventually hit upon a harmonious assemblage of all the best points and thus produce a model statute.

CHAPTER IV

THE OPERATION OF THE RECALL IN SMALL CITIES

I. EXTENT AND DISTRIBUTION

The law of the recall is based on a principle imbedded deep in the traditions of democracy—the right of the people to govern through their chosen representatives. Its intended purpose is to render public officials more mindful of their position as "trustees and servants of the public" by making them continuously, rather than periodically, responsible to the popular will. A law which has been in operation for a quarter of a century, however, needs more than a theoretical justification of its efficacy. It must stand upon its merits as indicated by its actual use.

The recall operates in two ways. Negatively, as a sort of "gun behind the door"; it is bound to exercise a certain control over an official's conduct in office; but no means can be formulated for measuring even approximately this aspect of its influence. It is almost entirely a matter of conjecture and opinion as to how much it has in this way contributed to the responsiveness and efficiency of public officers. On the other hand, the recall as a direct and simple method of getting rid of an official who has proved an unfortunate choice is more open to appraisal. While the records of this phase of its operation admit of no absolute finality of interpretation, they are sufficiently illuminating to justify the drawing of certain general conclusions.

The use of the recall in California has not been exten-

sive when compared with the total number of persons elected to office over the period in which the recall has been operative; but it has been employed with sufficient frequency to provide a rather complete laboratory for investigation of pertinent questions. To what extent has it been used? For what purposes has it been employed? How intelligently and usefully has it been applied? What defects have developed in its operation and how may they be remedied?

In studying the operation of the recall the first question that arises is that of the extent to which it has been employed. With regard to this point there seems to exist a certain misapprehension, due to the fact that no complete records are available. The standard commentators on elections and electoral machinery express the opinion that it has not been used more than a half-dozen times a year throughout the United States, and probably has not been resorted to more than a total of a hundred and fifty times.[1] As a matter of fact the recall has been employed more frequently than this in California alone.[2]

About one-half the instances of the use of the recall in California have occurred in towns and cities of less than 20,000 population, a group that includes approximately two hundred forty-five of the two hundred seventy incorporated municipalities of the state.[3] This widespread usage is due, in all probability, not to any inferiority of small-town government as compared with that of larger cities, but to the facility and inexpensiveness

[1] The following statement by an authority on California government is typical of the information available on the operation of the recall: "The recall in California has never been used in the case of an officer elected at large by the state. The number of instances of its use in the districts smaller than the state can be counted on the fingers." D. P. and T. N. Barrows, *Government in California* (1925), pp. 48-49.

[2] See p. 344 for table showing total of usages of the recall in California.

[3] Because of disincorporations, annexations, and the incorporation of new municipalities this number is approximate for the cities which have come within the jurisdiction of the law of the recall.

with which a recall movement can be initiated when the voters are few in number.

Both the form of government and the conditions relating to the use of the recall in this group of small cities are so generally similar in nature as to suggest the desirability of this classification for comparative purposes. It is in the small city that the whole community has the greatest opportunity to participate in governing. The problems of administration are far more simple than in the great metropolis; the individual citizen is able to maintain more direct contact with these problems; and he is likely to have much more information concerning the ability and official activities, as well as the private morals, of his fellow citizens who have been placed in office.

The form of government of practically all of the cities that fall within this group is conducive to democratic control. Most of them follow the same plan—that provided in a class charter made and adopted by the legislature for cities of the sixth class.[4] The elective officers, who are the only ones subject to recall under the general laws of the state,[5] are five trustees elected at large, a clerk, and a treasurer, all of them elected for four years. Regular elections are held on the second Monday in April of even years, and either two or three trustees are chosen at each election. The board of trustees, or council, elects one of its members mayor. As under this plan of government elective officials are few in number and are chosen for comparatively long terms, the electors are not overburdened and confused by a multiplicity of

[4] A sixth class city is one whose population does not exceed 6,000; but several cities whose recent rapid growth has placed them far out of this classification still continue the use of a sixth class charter. While any city having a population of more than 3,500 is entitled to adopt its own freeholders' charter; only a small number of less than 20,000 population have done so, and but few of these have experimented with the recall,—notably, Compton, Inglewood, Modesto, and Santa Cruz.

[5] *Above*, p. 74.

candidates and elections, and are in a favorable position, if they are so disposed, to maintain a careful surveillance of their elected representatives.

Since municipalities are not required to file with any agency of the state such information as the results of recall campaigns, there is but one source of official data —the archives of each individual city. These archives are neither readily available nor entirely dependable; but it has been possible to secure a varying amount of information from 172 of the 245 small cities. Most of the remaining 73 are widely scattered small towns of less than two thousand population, some of which apparently have never heard of the recall; while others regard their experience with it as a family skeleton to be kept in strict seclusion.

The securing of information relative to recalls did not appear, on first thought, to present insurmountable complications. It seemed reasonable that such elementary facts as when and where the recall had been used and what had been the outcome, would be easily obtainable. Supposedly, a simple questionnaire addressed to each city clerk, one of whose functions is the receiving and checking of recall petitions, would yield the desired data. This was a supposition, however, which failed to take into consideration the fact that a city clerk is a much harassed individual who has undergone bombardments of questionnaires and kindred annoyances until in many cases he has become entirely impervious to them. Such an attempt, consequently, produced responses from but thirty-five per cent. of the total, many of them vague and inadequate. A second request for information, directed this time to the city attorneys, raised the total number of replies to slightly over fifty per cent. Information regarding additional cities has been secured by such diverse means as personal inquiry and correspondence; the investigation of court records and news-

paper files; the checking of fragmentary data in publications on direct legislation and the recall; the good offices of civic organizations and interested students; and, by no means the least useful, the willingness of certain city officials to report on the political tribulations of their neighbors.

These varied means of investigation have educed the information that in fifty of one hundred seventy-two small cities the recall has been employed, at least to the extent of the filing of a petition with the city clerk, a total of 103 times. This total does not include a few recall movements in these same cities with regard to which it has been impossible to get specific information; and it is quite probable there have been others that have entirely failed to come to light. It is disconcerting, for instance, to visit a city in search of information regarding its supposedly lone experience with the recall, only to come upon the official records of eight, and also intimations of perhaps a half-dozen more. It seems reasonable to believe, too, that as over one-fourth of the towns from which information has been obtainable have used the recall, it may have been resorted to by some of the missing seventy-three as well. The writers believe, however, that in view of the nature and extensiveness of their investigations, of the number of persons in different parts of the state who have given their coöperation, and of the tendency for recalls to receive unusual publicity, the record here presented constitutes a reasonably accurate and complete picture.

THREATENED RECALLS THAT FAIL TO MATERIALIZE

Hardly a week passes, if the accounts of public officials are to be accepted, that a recall is not threatened in one or more of the small cities of the state. The majority of these are merely the casual threats or warnings of some temperamental taxpayer whose storm drain assessment

has appeared unduly inflated, or whose garbage pail has been run over by the city's collection truck. Many of them, however, are organized efforts of minority groups to coerce city officials into the adoption of a program or change of a policy, and attain sufficient significance to be reported in the public press. The following dispatch from the city of Tujunga regarding a recall which failed to materialize is typical:

RECALL MOVE DOESN'T BOTHER COUNCILMEN

Tujunga, Oct. 14 (1927).—Within the last few days handbills have been distributed through the business section announcing a mass meeting for the purpose of starting a movement for the recall of the entire Tujunga City Council. The handbills do not show who is responsible for the move or why the Council should be recalled. There have been rumors of a recall ever since the plan to annex Tujunga to Los Angeles failed by a decisive vote. One member of the Council said today that neither he nor his associates are worrying. "We get no pay for our work," he said, "and very few kind words. Abuse and criticism we hear on every side. There is a faction in town that is always looking for something to go amiss. Probably it is this group that is behind the recall." [6]

This sort of casual recall agitation sometimes attains the stage of the actual framing of a recall petition. Mass meetings are held, the scheme is given all possible publicity, and the petitions appear on the streets. To this point, since anyone can initiate this part of the procedure without official supervision, the movement may be nothing more than a blustering gesture; or the instigators may find that they have overestimated the sentiment against the assailed officers and give up the attempt.

Two near-recalls in recent years in the municipality of Turlock, which have fallen short of official action, reveal something of the nature of the petty tempests that occa-

[6] *Los Angeles Times,* October 15, 1927.

sionally disrupt the political tranquillity of the most respectable communities. One of these was directed against two trustees because they balked at a movement to revoke the business license of an individual who had been fined $200 for possessing liquor. The petition asking for their recall was salvaged from one of the gutters of Main Street, where it had evidently been lost by a solicitor.

In May, 1924, Mayor Bridegroom nearly faced a recall. It was stated in the petition that he and Trustee G. W. Johnson were ignorant of how the United States flag should be respected; that they did not represent the majority of the people; and that they worked against the best interests of the city. The only specific charges alleged that they had made hilarious comment regarding the "annual parade of the Portuguese Societies during Pentecostal celebration."

When a recall movement progresses to the point of the actual filing of a petition it acquires real standing and importance. Not only is there the presumption, from the petition, that at least a fourth of the active voters favor the removal of the impugned officials; but it is at this point that official recognition is given to what thus far has been almost exclusively a private enterprise, official supervision of all procedure is established, and official records become available. The small percentage of threatened and attempted recalls that reach this well-advanced stage of development bear a material relationship to the operation of the device, irrespective of whether they ever come to an election.

THE HIGH MORTALITY RATE FOR RECALL PETITIONS

The mortality rate for recall petitions that have been formally filed with city clerks is surprisingly high. The records show that of 103 petitions, twenty-nine have failed to mature to recall elections. In general, elections fail to materialize for one of two ostensible reasons—the

certification of the petition by the city clerk as insufficient, or the failure of the council to call the election.

When a recall petition reaches the city clerk's office with a bare minimum of the required signatures representing the best efforts of the circulators, the movement terminates promptly with the elimination of a few invalid names. Even when an allowance for shrinkage has been made by the securing of extra signatures above the necessary twenty-five per cent., carelessness in the circulation of the petition or failure to comply with all the technicalities of the law may render the petition invalid. Much depends on the attitude of the city clerk, whose function it is to check all petitions. If he elects to be overscrupulous in his checking, he can hold almost any petition insufficient.

Recall petitions have come to an untimely end because of a variety of technical defects. A petition to recall the mayor and three commissioners of Modesto in 1923 was rejected by the city clerk because the signers had failed to give their occupations. In the same year a movement developed to recall the president of the board of trustees of Seal Beach. The petitioners were careless in complying with the formalities and merely gave Seal Beach as their place of residence without adding their street addresses. The city clerk, acting on legal advice, certified the petition as being signed by "No qualified electors," and this was upheld by the superior court of Orange county. A petition to recall three trustees of this same city in 1926 was thrown out because one of the circulators was out on parole following conviction for an infamous crime and consequently not a qualified elector. In 1928 a recall petition in Hawthorne was held never to have been legally filed on the ground that the clerk's assistant who received it was a minor.

While the decisions of the clerk are not subject to review by any other municipal official, they frequently

are called in question in the courts. One case will serve to illustrate that a considerable degree of uncertainty exists as to the clerk's jurisdiction. A petition containing more than the necessary 253 signatures was filed October 19, 1923, for the recall of a member of the board of trustees of San Leandro. The city clerk refused to certify to the sufficiency of the petition, however, on the ground that the majority of the signatures were invalid. In his estimation 158 names did not appear in the handwriting of the signers, the dates after the names of 100 signatures were indicated by ditto marks; the occupations after the names of 24 did not appear to be in the handwriting of the signers; and a certain number of signatures had been secured by a person who was not a registered voter. The petitioners sought a writ of mandate to compel the clerk to act favorably on the petition and this was granted by the appellate court, but too late to make the holding of an election desirable.[7]

PETITIONS THAT FAIL THROUGH OBSTRUCTIVE TACTICS

The majority of fatalities to recall petitions are not merely the result of the clerk's strict performance of his ministerial duties, but of the natural reluctance of officials to be summarily ejected from office before the expiration of their terms. The election results indicate that an assailed official has an even chance of being sustained in office in a recall election; but it is much safer and less expensive to prevent the issue from coming to a vote. City councilmen, who are the most frequent objects of recall attacks, possess certain tactical advantages in the avoidance of elections which are becoming more generally recognized and utilized. While it is the function of the council to call the election, it stands to reason that

[7] Williams *v.* Gill, 65 Cal. App. 129. This somewhat involved aspect of the operation of the recall is treated at length in Chapter IX, "The Recall in the Courts," pp. 313-341.

no councilmanic majority performs this duty with any degree of enthusiasm when it threatens the removal of one or more of them from office and the shift of control to the opposite faction; and it is the expressed opinion of several experienced authorities that with expert advice and management the purpose and intent of the law can be ignored and any recall election averted.

The legal obstructions and artful political dodges to which councils sometimes resort to avoid the holding of an election have come to be a salient aspect of recall procedure. In the use of these devices, moreover, the element of time favors the incumbents; and a skillfully managed series of delays may enable them to complete their terms of office or at least to postpone the election until the most violent recall sentiment subsides. In any legal manoeuvering the city attorney has a leading rôle, not only because he is the legal adviser of the city, but, since he has been appointed by the majority of the council, his position frequently depends upon the maintenance of the political *status quo*. In this capacity he sometimes performs a most useful service in suppressing the factional misuse or overuse of the recall.

The simplest and least embarrassing method of averting or postponing a recall election is to have the petition declared invalid. The city clerk, although the permanence of his position depends upon his keeping aloof from factional quarrels, can be influenced indirectly through the city attorney to whom he looks for legal advice. The advice of this official, his professional disapprobation of any seeming slight to the dignity of public officers intensified by his own precarious position, is not likely to overlook any of the temporizing possibilities in the law.

Even if the clerk proves intractable, the council, although legally it has little option in the matter, can neglect to call the election; and then, intrenched behind free legal advice, can await the next move by the other side.

The petitioners, when it finally becomes evident that they can expect no voluntary favorable action on their petition, have but one recourse—to retain a lawyer and appeal to the courts. The conventional legal procedure is to seek a writ of mandate either to compel the city clerk to certify the petition as sufficient or to compel the council to call the election. If the decision favors the petitioners, indefinite postponement can sometimes be secured by an appeal to the higher courts. As it seems to be the practice, in such cases, for the incumbents to be defended at city expense, the promoters of the recall operate under a decided financial handicap.

A few illustrations will serve to indicate the effectiveness of this legal procrastination as well as the versatility of the city attorneys who are largely responsible for its development. While only ten elections have been entirely avoided by such tactics, well over a third of the recall movements in small cities have been delayed by litigation.

In 1925 a petition was filed demanding the recall of two trustees of Huntington Beach. The clerk certified the petition as sufficient, but the board took issue with his method of certification and refused to call the election. They held that his statement that the petition was sufficient "to the best of my knowledge and belief" constituted a shifting of responsibility which imposed upon them a judicial function not within their jurisdiction and authority. The petitioners were denied a writ of mandamus by the superior court and the case was not taken further.

The most recent series of episodes in the history of the recall in Seal Beach began late in 1926 with the throwing out of a petition for the removal of three trustees because one of the circulators had been convicted of an infamous crime and consequently was not a qualified elector. A second petition was circulated and filed immediately.

This one proved sufficient and an election was called for January 7, 1927; but the city attorney, who had discovered the means of suppressing the first petition, had come to the conclusion that the recall in Seal Beach was being overdone. Having heard of the existence of a certain laxity in the conduct of local elections he saw to it that the polls were carefully watched. At least fifty voters were challenged and, consequently, a number of others considered it unwise to appear. The official count showed the incumbents victorious by a majority ranging from seventeen to twenty votes.

Making sensational charges of corruption and intimidation in connection with the election, Walter R. Stortz, one of the defeated candidates, brought suit demanding a reversal of the official result.[8] More feeling was aroused when the three defendant trustees adopted a resolution authorizing the city attorney to defend them at city expense and allowed bills for defense witnesses.[9] A recount was secured, but the incumbents were still sustained by a narrow margin.

In Seal Beach the mistaken opinion prevails that six months must elapse between attempts to recall the same officials. As the city attorney saw no reason to enlighten the interested parties, the next movement to oust the three trustees did not get under way until summer. This time, as a special precaution, separate petitions were filed.

The clerk certified the petitions as sufficient, but the city attorney thought he detected another means of cutting down the number of local recall elections per annum and advised the board against calling the election. He pointed out that the petitions demanded the recall of certain trustees, whereas the state legislature had in its session of 1927 changed the title of legislative body and officials in sixth class cities to council and councilmen.

[8] *Los Angeles Times*, January 18, 1927.
[9] *Ibid.*, February 8, 1927.

This was an attempt, consequently, to recall an officer that did not exist from a nonexistent office.

The opposition followed the orthodox procedure of seeking a writ of mandamus from the superior court. The court regarded the attorney's contention with disfavor and granted the writ. It was served on Mayor Dolley by a constable who happened to be the mayor's pet aversion, and an altercation ensued in which the mayor became excited and brandished a hammer with which he was repairing his garage. He was arrested, charged with assault, and convicted. The payment of a $100 fine was suspended for a year and the mayor urged by the judge to bury the hatchet and get his flock together in harmonious civic enterprise.[10]

The election remained uncalled, however; for the question of the validity of the petition was carried to the appellate court.

The city officials of Watts in 1925 evolved a distinctly original scheme for combating recalls. A petition to recall President Manus was filed January 24, 1925, and certified by the clerk as sufficient February 16. On the same date the board of trustees directed the city attorney to prepare the necessary proceedings. The petitioners, after waiting in vain twenty-three days for further action, sought a writ of mandate to compel the calling of the election. The defendants, in justification of their inaction, declared that they could not legally and constitutionally call the election as the city faced a serious deficit and no funds for the holding of a special election would be available during the remainder of the fiscal year. They pointed out that the generous allowance for special elections provided in the budget had already been exhausted by two recall elections, and that the $715 needed to finance a third was not to be had. The judge was skeptical of this demonstration of conscientious

[10] *Ibid.*, December 16, 1927.

frugality, however, and issued a peremptory writ of mandate.[11]

The same ingenious group had just attempted another bit of obstructive legal strategy of a type rather infrequently employed. This scheme is to prevail on some friendly taxpayer to bring suit to enjoin the council from calling the election. The plaintiff, in this case, alleged that unless the board was restrained by order of the court it might call an election for the removal of Trustee M. T. Manus and thus "unlawfully and unauthorizedly incur an indebtedness in behalf of said city" of Watts.[12] The writ was denied, but this method of avoiding recalls would appear to have unexploited possibilities.

While the courts are the surest refuge for officials seeking to avoid recall action, a large amount of ingenuity has been developed in inventing other dilatory tactics.

Three councilmen of Hermosa Beach demonstrated successfully how to take advantage of the imminence of a general election to avoid a special recall campaign. A petition was filed for their recall in December, 1927, under circumstances that required quick action if the interest of the petitioners was to be safeguarded.[13] While the clerk was checking the petition the council met and adjourned for a month. When it reconvened in January a properly drawn ordinance presented by a minority councilman, providing for an election in February, was refused and the matter turned over to the city attorney for deliberation. In this way it was possible to postpone the recall election until the regular municipal election of April 9, 1928. At this time the terms of two of the three expired, leaving only one to be involved in recall proceedings.

[11] W. P. Snow *v.* City of Watts, Case No. 164, 997, Superior Court of Los Angeles County.

[12] W. R. Sempter *v.* City of Watts, Case No. 164, 093, Superior Court of Los Angeles County.

[13] For details regarding this recall see pp. 161-166.

The most unique plan for the avoidance of recall elections was evolved by a councilmanic majority in the city of Watts. The "ins" conceived the scheme of waiting until a petition for the recall of some of their number was about to be filed and then of accepting their resignations and filling the vacancies by appointment with others of their own faction. One illustration will serve to show the technique. Mrs. Charlotte M. Knox and Mr. Emmet Burkhard resigned their positions as trustees at a special meeting of the board summoned at 3 A.M and held at 8 A.M., March 28, 1925. Mr. James Smith and Mr. L. P. Fisher, who happened conveniently to be in the room, were appointed to fill the vacancies and immediately sworn in. Mrs. Knox was thereupon elected city mother at a salary of $50 a month and Mr. Burkhard was made street superintendent at a monthly stipend of $175. A petition to recall the two from office was filed April 1.[14]

These procrastinating tactics occasionally produce unpleasant repercussions. The voters of Seal Beach began their experimentation with the recall in 1917, with J. H. Blagge, president of the board of trustees, as the first victim. Blagge seems to have been a hard-headed member of the old guard who was out of sympathy with the ambitions of the "booster" element in the community. At any rate the petition, which was filed March 8 with over fifty signatures, charged him with unwillingness "to consult with taxpayers and property owners in matters directly concerning them and also in matters of general civic interest," with being "arbitrary and imperious as presiding officer of the board," and with actions that have caused property owners to withdraw improvement petitions, "thereby greatly hindering the growth and development of the city."

Blagge evidently disapproved of this new-fangled no-

[14] Minutes of Board of Trustees of Watts.

tion of the recall as well, for he arbitrarily adjourned the board and refused to act on the petition. Such high-handed conduct brought forth a storm of protest and a second petition was immediately circulated and filed March 13, this time with the names of seventy-one electors. The charges were:

> That said Blagge, as presiding officer of the board of trustees, declared a meeting of said board adjourned, and left such meeting and refused to act as a member of said board, or permit said board to act, upon a petition demanding his recall, which petition he knew was in the possession of the City Clerk who was present at said meeting and who he knew would present to such board, with the certificate of such Clerk that the same was sufficient, thereto attached, if he had been given opportunity to do so.

The recall election resulted in Blagge's removal from office.

Quite contrary to what one would reasonably expect, an official may be voted out of office in a recall election and still retain his position. This has actually occurred in at least three cases and has threatened on a number of occasions. In East San Diego, for instance, the entire board of trustees was recalled in 1923, but refused to canvass the vote because of alleged fraud in the circulation of petitions and were upheld by court action.

The city trustees of Hawthorne have found adverse majorities in recall elections to be of very little embarrassment. In 1925 petitions were circulated asking for the recall of certain members of the board of trustees. The election was held and the officials declared recalled, but on account of a technical error the courts held this election null and void. The point raised was that the notice of election had not been published the length of time required by law. This was caused by the breaking down of the printing press, and the consequent delay of about four hours in the publishing of the newspaper carrying the notice.

The next attempt to recall these officers was immediately after the court decision. The election was held and the officers declared recalled, but the deposed officers refused to give way to the newly elected officials. The backers of the recall brought mandamus proceedings against the recalled officials and a writ was granted by the superior court. The incumbents appealed to the appellate court but the calendar was so crowded that the case was set for review some time after the date that their term of office would expire.[15]

RECALL MOVEMENTS THAT HAVE RESULTED IN ELECTIONS

When a recall movement finally comes to an election, judged by general results, the officials whose recall is sought stand an even chance with their opponents. Seventy-four of the total of 103 petitions that have been filed have resulted in elections, and in slightly less than half of the cases have the assailed officials been recalled. In thirty-four instances every official on the ballot has been voted out of office. In one case two of five trustees were recalled, and in another, one of four commissioners was ousted.

Petitions have been filed against a total of 264 public officials and 191 of these have had to run the gauntlet of an election. Eighty-one of this number, approximately forty-two per cent., were voted out of office. As might be expected, legislative officials have been chiefly involved. Of the 191 officials who came before the voters 179 were councilmen, commissioners, or trustees, and seventy-five of these were recalled. City clerks are not likely to be embroiled in recall proceedings unless they permit themselves to be drawn into political activities. Only seven have figured in recall elections and three of these have been removed. Three school

[15] For another instance of this type see the account of an election in Vallejo, p. 197.

directors of Modesto, whose charter permits their recall, were removed from office, and an attempt against an elected city attorney and a city treasurer of Compton failed.

The distribution of the use of the recall in small cities during the seventeen years that the law has been on the statute books is so irregular as to deserve attention. Even if allowance is made for the failure to discover some of the early recalls, the available records indicate that in the first decade of its existence it was very little used. To Colton goes the distinction of being the first and only city to use the law successfully in the year of its enactment, and in 1912 Chino was the only town to employ it. In 1915, and again in 1917, it was resorted to five times, three of these, however, by the town of Seal Beach which seemed to believe in exploiting all the possibilities of the newly discovered novelty. In fact its recorded employment twenty-three times in this ten-year period can hardly be regarded as excessive.

After 1920, however, the recall became increasingly popular until in 1925 it was used on seventeen different occasions. In each of the following two years it was employed only ten times; and the nine instances of its use in 1928 indicate the continuance of normalcy. The fact that well over half the total number of recalls in the small cities of California have occurred within the last five years is of sufficient significance to demand an explanation, which can be deduced only from the study of the actual causes of the movements.

The geographical distribution of the 103 recall movements is fully as significant as their spread over seventeen years of time. They have developed, except for scattered instances, about large centers of population and rapid population growth, chiefly in the suburban areas of Los Angeles, San Francisco, and San Diego. The recall has been used by small cities in only seventeen of the fifty-eight counties of the state. While it has been em-

ployed in all sections of Southern California, in the San Joaquin Valley, along the coast between Los Angeles and San Francisco, and in the metropolitan area of San Francisco, it seems to have been almost unheard of in the slower developing and more isolated parts of the state. The lone exception was the futile attempt of Susanville, in the mountainous northeastern corner, to recall certain councilmen.

The localization of small-town recalls has been even more pronounced in recent years. Fifty-one of the 103 have taken place in Los Angeles county, and sixty-one within a radius of thirty-five miles of the city of Los Angeles. All but fourteen of these have occurred within the last six years, during the time when an abnormal influx of population was almost overnight turning hamlets into overgrown cities. Over one-half of the small cities of Los Angeles county have used the recall as compared with its use by about one-fourth of the total number of such places throughout the state. The two towns of Watts and Seal Beach, however, are responsible for nineteen of these movements or nearly one-fifth of the total in the state.

SUMMARY OF RECALL MOVEMENTS IN CITIES UNDER 20,000 POPULATION

Number of cities from which information secured.	172	*Number of Officials Involved*
Number of cities in which recall petitions filed....	50	
Number of times in which recall petitions filed...	103	264
Number of times held insufficient.....	17	46
Number of times election averted by litigation...	10	23
Number of times election averted by resignation.	2	4
Number of times election held.....	74	191
Number of times recalls successful.....	36[1]	81

[1]In two cases which are included in this number certain officials were sustained and others removed.

RECALL MOVEMENTS IN CALIFORNIA MUNICIPALITIES UNDER 20,000 POPULATION

City	Population	Date	Officials Involved	Petition Insufficient	Litigation	Election	
						Failed	Succeeded
Albany	2,461	1922	City Clerk	.....	.....	#	.....
Anaheim	13,332 ('25)	1925	Four Trustees	.....	.....	.....	#
"		1925	One Trustee	.....	.....	#	.....
Azusa	6,481 ('27)	1927	One Trustee	.....	.....	.....	#
"		1928	Two Trustees	.....	.....	.....	#
"		1928	Two Councilmen		Resigned	before filing	
Banning	2,024 ('25)	1925	Two Trustees	.....	.....	#	.....
Beaumont	1,294 ('28)	1928-29	Three Councilmen	.....	.....	#	.....
Calexico	6,223	1927	Five Trustees	.....	.....	.....	#
Burbank	23,024 ('28)	1928-29	Mayor, Councilman	.....	.....	#	.....
Calipatria	785	?	One Trustee	#	.....	.....	.....
Chino		1912	One Trustee	.....	.....	.....	#
Colton	3,980 ('10)	1911	Three Trustees	.....	.....	.....	#
"	4,501 ('27)	1926	Two Trustees	.....	.....	#	.....
Compton	12,932 ('27)	1927	Mayor, C'nc'lm'n City Atty., City Treas.	.....	.....	#	.....
Coronado	5,142 ('25)	1926	Five Trustees	#	.....	.....	.....
"		1926	Five Trustees	#	.....	.....	.....
Covina	1,999	1922	Four Trustees	.....	.....	#	.....
"		1922	City Clerk	.....	.....	.....	#
"	3,064 ('25)	1926	One Trustee (Mayor)	.....	.....	.....	#
Culver City	10,000 ('27)	1926	One Trustee	#	.....	.....	.....
Daly City	3,779	?	Three Trustees	.....	.....	#	.....
E. San Diego	4,148	1923	Five Trustees	.....	.....	.....	#
El Paso de Robles	1,919	1914	Mayor	.....	.....	.....	#
" " " "		1921	Five Trustees	.....	.....	#	.....
Hawthorne	7,500 ('27)	1925	Three Trustees	.....	#	.....	.....
"		1926	Three Trustees	.....	#	.....	.....
"		1928	Five Trustees	#	.....	.....	.....
Healdsburg	2,412	1923	Five Trustees	.....	.....	#	.....
Hemet		1913	.....	.....	.....	.....	.....
Hermosa Beach		1913	Three Trustees	#	.....	.....	.....
" "	2,327	1923	Five Trustees	.....	.....	3 failed	2 recalled
" "		1924	Two Trustees	.....	#	.....	.....
" "		1925-27	Four Trustees	.....	.....	#	.....

Hermosa Beach	5,735 ('27)	1927-28	Three Trustees	.....	.....	.....	[1]1 recalled
" "		1928	One Trustee (Mayor)	#	.....	.....	.....
Huntington Beach		1911	Two Trustees	#	.....	.....	.....
" "	4,100 ('27)	1924-25	Four Trustees	#	.....	.....	.....
" "		1925	Two Trustees	.....	#	.....	.....
Huntington Park[2]		1915	Three Trustees	.....	#	.....	.....
Inglewood	3,286	1922	Three Trustees	.....	.....	.....	#
Lynwood	113	1922	One Trustee (Mayor)	.....	.....	.....	#
"	5,500 ('27)	1926	Four Trustees	.....	.....	.....	#
"		1927	Two Trustees	.....	.....	#	.....
Manhattan Beach	859	1915	Two Trustees	.....	.....	#	.....
" "		1915	Two Trustees and Clerk	.....	.....	.....	#
" "	4,878 ('27)	1927	Five Trustees	.....	.....	#	.....
Maywood	7,000 ('27)	1927	Three Trustees	.....	.....	.....	#
Menlo Park		1928-29	Two Councilmen	#	.....	.....	.....
" "		1928-29	Two Councilmen	.....	.....	#	.....
Modesto	9,421	1921	Mayor and Three Commissioners	#	.....	.....	.....
"		1921	Mayor and Three Commissioners	.....	.....	.....	#
"	12,698 ('25)	1926	Three School Directors	.....	.....	.....	#
Montebello	5,000 ('24)	1924	One Trustee	.....	.....	#	.....
Monterey Park	4,108	1923	Five Trustees	.....	.....	#	.....
" "	5,258 ('27)	1927	Four Councilmen	.....	.....	.....	#
National City	3,116	1916	Three Trustees	.....	.....	#	.....
Newport Beach	3,000 ('27)	1928	Two Councilmen	.....	#	.....	.....
Oceanside	2,474 ('25)	1925	One Trustee	.....	.....	#	.....
"		1925-26	Two Trustees	.....	#	.....	.....
Redondo Beach	2,935	1914-15	Three Trustees	.....	.....	2 failed	1 recalled
" "		1915	One Trustee	.....	.....	#	.....
San Buenaventura	4,342	1919-20	Two Trustees	.....	.....	#	.....
San Gabriel	2,640	1919	Five Trustees and City Clerk	.....	.....	#	.....
San Leandro	5,703	1923-24	One Trustee	.....	#	.....	.....
Santa Cruz	10,917	1924	Four Commissioners	.....	.....	3 failed	1 recalled
Sausalito	3,482 ('25)	1925	Four Trustees	.....	.....	#	.....
Seal Beach	669	1917	One Trustee (Mayor)	.....	.....	.....	#
" "		1917	One Trustee	.....	.....	.....	#
" "		1917	One Trustee	#	.....	.....	.....
" "		1920	One Trustee	.....	.....	#	.....
" "		1923	One Trustee (Mayor)	#	.....	.....	.....

[1] Terms of two expired before date of election. [2] Also appears in group of cities of 20,000-100,000 population.

RECALL MOVEMENTS IN CALIFORNIA MUNICIPALITIES UNDER 20,000 POPULATION—*Continued*

City	*Population*	*Date*	*Officials Involved*	*Petition Insufficient*	*Litigation*	*Election*	
						Failed	*Succeeded*
Seal Beach	1,826 ('25)	1926	Three Trustees	#	.....	.....	.....
" "		1926-27	Three Trustees	.....	.....	#	.....
" "		1927	Three Trustees	.....	#	.....	.....
Signal Hill	2,250 ('25)	1925	Two Trustees	.....	.....	.....	#
" "		1927	Two Trustees and City Clerk	.....	.....	#	.....
South Gate	7,500 ('25)	1923	Two Trustees	.....	.....	.....	#
" "		1923	Two Trustees	.....	.....	#	.....
" "		1924	One Trustee	#	.....	.....	.....
South Pasadena	13,154 ('25)	1924	Two Trustees	#	.....	.....	.....
So. San Francisco	5,317 ('25)	1925	Three Trustees	#	.....	.....	.....
" " "		1925-26	Three Trustees	.....	.....	.....	#
Susanville	918	1921	Three Trustees	.....	.....	#	.....
Taft	3,317	1917-18	Two Trustees	.....	.....	.....	#
"		1922	One Trustee and City Clerk	.....	.....	.....	#
"		1924	One Trustee	.....	.....	#	.....
"	6,021 ('25)	1925	Three Trustees	#	.....	.....	.....
Tulare	4,994 ('25)	1924	Three Councilmen	.....	.....	#	.....
Turlock	3,394	1914	One Trustee	.....	.....	#	.....
Venice	10,385	1917	Two Trustees	.....	.....	.....	#
"	21,118 ('25)	1924	Two Trustees	.....	.....	.....	#
Watts		1913	Three Trustees	.....	.....	#	.....
"		1915	Five Trustees and City Clerk	.....	.....	#	.....
"	4,529	1923	Two Trustees	.....	.....	.....	#
"		1923	Four Trustees	.....	.....	.....	#
"		1924	Two Trustees	.....	.....	#	.....
"		1924	Two Trustees	.....	.....	.....	#
"		1924	One Trustee	.....	.....	.....	#
"	12,251 ('25)	1925	Two Trustees		Resigned	before filing	
"		1925	One Trustee	.....	.....	.....	#
"		1925	One Trustee	.....	.....	#	.....
"		1925-26	Two Trustees	.....	#	.....	.....

Census figures for 1920 are given unless otherwise indicated. Estimated figures are taken almost entirely from the annual reports of the State Controller.

CHAPTER V

THE OPERATION OF THE RECALL IN SMALL CITIES

II. SIDELIGHTS ON SMALL-TOWN DEMOCRACY

Records of places, dates, and election results, while they shed a valuable type of illumination on the use of the recall, constitute a very small part of the story of its operation. To understand the real significance of the operation of this instrument, it is necessary to know something of the underlying causes and intimate characteristics, as well as the statistical results, of recall movements. A knowledge of the interests and influences that disturb the orderly functioning of city governments and an appreciation of the way in which human nature reacts politically in the stress of recall campaigns is essential. Each instance of the use of the recall is an interesting symptom, demanding diagnosis, of a defective condition at some point in political operation or control; and the phenomena surrounding the functioning of so essentially democratic a weapon require explanation in terms of the working of the popular mind.

The writers, or their representatives, have visited personally, in some cases several times, a large majority of the cities in which the recall has been used. City halls have been ferreted out both on main streets and back alleys, and copies of recall petitions and comparative election figures secured from the official records when available; city clerks, mayors, and councilmen have been interviewed and city attorneys consulted; the opinions of both recall agitators and assailed officials have been solicited and leading citizens have been prevailed upon to

give their views; local newspaper editors have been importuned to divulge their store of intimate knowledge and the files of their papers carefully scanned; and a futile search maintained for the non-existent "impartial and unbiased observer."

Towns in the throes of recall campaigns have received special attention. Recall campaign headquarters of both factions have been invaded, campaign literature accumulated, and campaign managers encouraged to talk. Court records have been examined and trials of recall cases attended. In some cases the voluminous records of certain councilmanic transactions preceding recall activities have been scrutinized to determine the validity of general charges. In fact, the recall has been treated as a very unique and revealing means of analyzing and understanding local politics, especially in its human aspects.

It stands to reason that no narrative of the interplay of motives and impulses in even minor political crises can lay claim to scientific accuracy or completeness. The accounts given are the most authentic obtainable; but they are limited by a natural reticence on the part of conscientious citizens to give undue publicity to matters often regarded as a local disgrace, as well as by the failure of the stories of conflicting factions to harmonize.

That some provocative irritation of the body politic lies at the foundation of every recall movement is a thoroughly sound working hypothesis; but the nature of the annoyance and the cause of the disturbance are not always what they appear to the casual observer. The picture of a wayward public official detected in his misdeed by the vigilant eye of an alert citizenry, an intelligent electorate rising up in righteous indignation under the guidance of public spirited leadership, the prayerful signing of the petition for the recall, and the movement of citizens *en masse* to the polls on election day, impelled by a stern sense of civic duty, to ostracize the one who

has betrayed his trust to the disgraceful oblivion of untimely ex-officialdom is a conventional conception of ideal politics not entirely accurate or true to life.

There are several important factors, not always given due recognition in the orthodox theory of democracy, that must be taken into consideration in ascertaining the causes and understanding the nature of recalls. It is necessary, in the first place, to displace the naïve conception of the unity and singlemindedness of democratic society in its political aspects in favor of a truer picture of conflicting economic, moral, social, and personal interests in a community only occasionally drawn together in harmonious agreement on some common civic enterprise. The clash of interests in a small town is as real as in the largest community. The conflicts that arise may appear petty and trivial, but they are of the same essence as the issues that disrupt great societies. The local encounters of competing business interests, the collisions of the conflicting mores and folkways of different social and religious groups, and the chronic manoeuverings of the "ins" and the "outs" are miniature reproductions of the forces that underlie the functioning of all government. Man as a political animal is unvaryingly the same species, whether functioning on a large scale or a small.

Another misconception that has produced much cynical disillusionment has been the assumption that every political activity is the result of an intellectual process. There would be no need for cynicism or disappointment, however, if the predominating emotional and instinctive bases of social life were kept in mind. Why rail at democracy because of the failure to realize false expectations? It is to be expected that the frailties of human nature will be exhibited fully as much in the way in which people function politically as in any other line of human conduct. As Shaw declares, "There is no magic

in the ordeal of popular election to change narrow minds into wide ones, cowards into commanders, private ambition into civic patriotism, or crankiness into common sense." The recognition that innate impulses and emotions, rather than ideas, are the ruling forces in human conduct is the beginning of wisdom in politics.

It must be kept in mind, in the third place, that every electorate falls into two distinct and unequal divisions, a small coterie of insiders, allied for management and control, and a large group of uninitiated and unorganized citizens, the objects of their manipulation. One group remains behind the scenes and pulls the strings, the other responds with the docility and precision of a troupe of marionettes. No matter how well-intentioned and intelligent the average citizen may be, he labors under the disadvantage of being an amateur and an outsider in competition with professionals who have readier organization and information at their disposal. Too often, unfortunately, his civic responsibilities are not a matter of rational concern to himself and he falls an easy victim to expert methods of exploitation that take advantage of all the irrational elements of human nature. An awareness that the art of government is "a technique for controlling the common man" sheds much light on the operation of the recall. There is no reason to believe that a public which does not initiate, lead, and direct in ordinary political movements will be found performing these important functions in a recall campaign.

THE CAUSES OF RECALLS

The most readily available sources of authoritative information as to the reasons for recalls are the complaints set forth in recall petitions. At least the information is authoritative in the sense that it is an official statement to the voters from the instigators of the recall themselves. Certain horrified commentators have discovered, how-

ever, that in many cases these individuals have not been entirely candid and open in their statements, and in some instances have not disclosed the true motives at all.[1] Since, from the nature of actual politics, nothing else was to be expected, these formal statements of grounds fit perfectly into the picture of the recall.

Broad, sweeping generalizations characterize the formal statements of grounds for the majority of recalls. The most orthodox and conventional complaint is the brief but inclusive charge of "general incompetency and inefficiency." [2] Or it may be stated even more succinctly that "Each of said members is incompetent to perform the duties of said office and unfit to continue to hold the same." [3] Next in order of popularity is the charge that an official has been "extravagant with and wasteful of the Public Funds." [4] Sometimes a number of such general complaints are grouped together in a very formidable general statement such as the following:

> That said named members are, and each of them is, wasteful and extravagant in the expenditure of the public funds of said City, insubordinate to the wishes of the people thereof, partial in the construction and maintenance of the public improvements in said City and in the enforcement of the building ordinances thereof and in the handling of traffic violations therein; and incompetent to perform, negligent and unjust and detrimental in the performance of, the duties of said office, and unfit to hold the same.[5]

Such general charges do little more than comply with the formalities of recall procedure, make it difficult for the assailed officials to reply, and indicate that the promoters place very little dependence on statements made in petitions for the success of a recall movement. It is consid-

[1] See A. B. Hall, *Popular Government*, p. 214.
[2] Azusa, 1927.
[3] Inglewood, 1921.
[4] Huntington Beach, 1923.
[5] Monterey Park, 1923.

ered unnecessary, apparently, in view of the casual attention that people give to the petitions they sign, to devote much care to this part of the procedure.

It is the exception rather than the rule, therefore, that specific and detailed charges are made; but when they are they throw much illumination on small-town politics, even when they still fail to disclose the real issues. When a petition to recall three trustees of Seal Beach declares:

> That none of said members of the Board of Trustees derive their maintenance from or in the city of Seal Beach, and in consequence are not and have not been in sympathy with the business interests of the city but have openly antagonized and discouraged business enterprise, and that
>
> They have maintained a glorified police department, composed of inexperienced and incompetent officers, in numbers, three times as large or more than has heretofore been found necessary. Where at most three men heretofore have been found sufficient to police the city, they have kept from six to ten men, thus adding an unnecessary burden on the taxpayers,

it is hardly necessary to know of the unmentioned real issue of an "open versus a closed" town to form a colorful picture of civic affairs in Seal Beach.[6]

When it was charged in a petition to recall a trustee of the city of Turlock in 1914 that, "He caused the Fire Engine to be housed in an inadequate shed, difficult of access and hampering the efficiency of said Engine, and notwithstanding the protests of a majority of the Fire Department," it probably represented a real grievance.

In taking up the subject of the real causes of recalls it would be very convenient to be able to classify them in orderly fashion as to type, and to rate them from the point of view of justification. Unfortunately, recall politics are as complex as any other variety of politi-

[6] Seal Beach, 1926-27.

cal action and admit of no such simplicity in cataloguing. All that can be attempted is to present the different factors in their proper relationship and proportions.

Every recall movement must have both an issue and an instigator. It is possible to conceive of a political situation becoming so intolerable as to produce almost spontaneous action to effect a change, and it is also conceivable that a recall movement might be instituted without any reasonable justification whatsoever. In one case the issue is the predominating factor, in the other the promoters of the recall; but both are always present in varying quantities. How to evaluate and apportion the responsibility is the complicating element, and yet it is necessary to attempt this to determine the degree of sincerity behind the movement. But it is not entirely a question of the distribution of responsibility between these two factors. More than one recall, started over a trifling matter for some ulterior purpose, has resulted in the unearthing, before the close of the campaign, of real reasons for the ousting of the officials involved.[7] It is frequently true, moreover, that trivial and significant causes are linked together, the former even becoming the more influential in determining the outcome;[8] and the immediate cause may be merely the final episode in a series of developments that are fundamentally responsible for a recall.

If any classification of the causes of recalls is to be attempted it must be to group them roughly in two divisions, those in which the personal influence predominates and those in which the issues are most prominent. The

[7] For an illustration see Santa Cruz recall, pp. 144-145.

[8] In the case of recall of two trustees of Manhattan Beach in 1915, the formal charges of inefficiency, incompetency and disloyalty to the city were of doubtful validity; but the personal idiosyncracies of the two trustees aided in their downfall. One was a crusty old sea captain accustomed to having his own way, and the other a henpecked individual whose better-half habitually attended council meetings and nodded to him his voting instructions.

former will be dealt with first as illustrating the less justifiable and the less important use of the recall. They are by no means less significant, however, in determining how the public acts politically.

Political Factionalism.—A typical response to queries as to the causes of recalls has been that, "pure political spite characterized the movement." There is no question that the machinations of some individual or group of individuals has been a contributing factor in the majority of recalls and a prominent influence in many.

The existence of factional political differences is the most universal explanation of this state of affairs. While the recall provides a very effective potential weapon for the perennial bickerings of the "ins" and the "outs," it is a grotesque exaggeration to conceive of the defeated rivals habitually hovering around the scene of battle after the election is over until the six-month period of grace expires and they can initiate recall proceedings. Such things have happened to be sure. The opponents of Trustees Holston and Piner of Hermosa Beach in 1924 were so overzealous that they even encroached a few days on the time limit and made it possible for the two officials to secure the invalidation of the petition in the courts. But except in the case of a few towns where the recall has been frequently resorted to, recalls have not been the result of audaciously concocted schemes for rapid rotation in office. It is much more accurate to conceive of the leaders of the minority exhibiting merely a natural alertness and promptitude in seizing advantage of a major blunder of the administration.

This raises the pertinent question as to the nature of the lines of cleavage in small-town politics. Not only are the ballots in municipal elections in California non-partisan by law, but the actual influence of major party alignments is negligible. There is no permanent artificial

political grouping, therefore, to obstruct the free play of actual conflicting interests.

The old state of affairs, so common to many small towns, where the feuds of the Methodists and the Presbyterians, or the Baptists extended into local politics, is being replaced by an era of good feeling in which differences in religious convictions are being merged in the complacent conformity of Rotary and Kiwanis. By this means the "better element" is becoming more able to draft "dependable" political candidates and maintain the city council as a fairly efficient agency of the local Chamber of Commerce. It is only occasionally, under such a benign régime, that the unredeemed outsiders who constitute the "bolshevik element" can furnish unpleasant opposition to the ruling order.

Not all communities have progressed to this stage of peaceful bourgeois paternalism. Rival realtors and other legitimate and illegitimate business interests still vie for political control; the progressives and the standpatters still fight each other over the question of public improvements; the profligate and the virtuous still contest the validity of blue laws and their enforcement; and childless octogenarian taxpayers continue to oppose the aspirations of the impoverished proletariat for improved free education for their prolific offspring. In rapidly growing cities the older residents and the newcomers look on each other respectively as interlopers and mossbacks; and in suburban communities the indigenous and commuting sections of the population have for one another a mutual loathing and disgust. In recent years the Ku Klux Klan has still further complicated and intensified the issues that are the life of the politics of a small city.

This kaleidoscopic picture of contending influences behind local politics, to be accurate, must place the emphasis upon the leaders—the petty kingmakers, the reformers, and the local political bosses whose task it is to

arouse the inert public when signatures and votes are needed. Since most of these clashing interest groups lack organized permanency and are more likely to spring into activity over issues of temporary significance, it is evident that the instigation of recalls in the average town is not likely to be carefully premeditated or a part of the established political technique, but rather an action undertaken under the pressure of unusual circumstances. There are, however, a few notable exceptions to this rule, more especially the cities of Watts, Seal Beach, Taft, and possibly Hermosa Beach, Lynwood, and Hawthorne.

The Recall in Watts.—The politicians of Watts have given the most notorious illustration of how the recall may be used as a political football. The minutes of the board of trustees of this thriving suburb of Los Angeles for the years 1923, 1924, and 1925 reveal a fluctuating condition of political affairs that would have made a Central American revolutionist green with envy. During that brief three-year period at least nine distinct recall movements resulted either in elections, litigation, or resignations; and several more failed either from lack of sufficient support or because of the shrewd strategy of the administration.

Watts was notorious even on the vaudeville stage, during these stirring years, for its recall politics; but for the town fathers the situation was often too serious to be treated with levity. As one civic leader declared, "Politics is a wonderful thing, but Watts politics is a fearful and malignant disease. It seems to warp men's minds so that they will forget all civic pride, and manufacture lies about those who are earnestly seeking to make Watts a city instead of a joke." *

Back of this chaotic state of affairs was an exaggerated combination of all the factors that conspire to disturb

* *Watts Herald*, October 15, 1924.

small-town politics. The post-war influx of population found Watts an overgrown village governed by the proverbial peanut politicians and dominated by a typical political boss of the bucolic variety. Factionalism in local politics arose mainly from the zeal with which numerous financially depressed citizens sought city jobs that carried a remuneration ranging all the way from $50 to $150 a month. Further complicating the situation were an excessive number of bootleggers, a police department of dubious reliability, a large contingent of influential pool-hall proprietors, a reform element that wanted the pool halls removed from Main Street, a group working for the reopening of a notorious clubhouse, and a sizeable negro population that could be conjured with politically. Under such conditions Watts proved inviting ground for the political operations of large corporations interested in promoting public improvements, and it was frequently difficult to determine whether election contests were between contending factions of the citizenry of Watts or between rival paving companies.

The recall epidemic in Watts broke out in January, 1923, when the city boss caused the recall of two trustees who had questioned his dictatorship; and threatened to become chronic until in 1926 the people sought relief from their local political afflictions by voting for annexation to Los Angeles. It was in 1923, too, that the National Paving Company established temporary control of the board of trustees and began acquiring contracts for the paving of the streets of Watts at extortionate prices. A local attorney, his property thus threatened with an excessive assessment, instituted a movement to recall the four boss-controlled trustees. He started a newspaper; conducted a campaign featured by such incidents as his own arrest on the charge of criminal libel, and the arrest of the boss on the charge of having hurled a "stink-bomb" into a recall meeting from which he had

been ejected; and succeeded in engineering the recall of the four trustees and the election of his own candidates.

No sooner had he been installed by the new board as city attorney and police judge and had found means of canceling the collusive patented paving contracts, however, than he discovered that the new chief of police and three of his trustees were conspiring against him and that the mayor was exhibiting, in his one-chair barber shop, a block of the paving material of another patented paving company. Three short months from the election found him dismissed from office and the old crowd back in power with a three-to-two majority in the council. Two months later, in the April general election, his candidates won, restored him to office, and turned out the conniving chief of police. The following month the ex-police force circulated a petition to recall the most vulnerable member of the majority trio, and a counter petition was started against the two minority trustees on the ground that it was as easy to hold an election for three as for one. Since only the latter of the two petitions proved sufficient, a special election was held in July for the recall of the minority members—and failed. Thus the *status quo* was maintained, but the city attorney was confronted with another libel suit, brought this time by the ex-chief of police.

The petition against the administration trustee was finally completed, the administration forces hastily circulated another petition against the opposing members of the board and completed it in five days, and a special election was held in September at which all three trustees were recalled. The administration, as a result of this victory, not only acquired a four-to-one majority, but added to its power by the elevation to a trusteeship of the president of the local W. C. T. U.

So numerous had recall elections become that they

threatened to deplete the city treasury if they continued; and there was every indication that they would continue unless something could be done to avert them. Whereupon the city attorney had a brilliant idea. Since an official must be six months in office before he becomes subject to recall, why not have administration officials serve only six-month terms. The period of grace for Trustee Odell, who had been elected in April, 1924, expired in October. In October, before a recall petition could be filed, Mr. Odell resigned, received an appointment to the police department, and was succeeded by Mr. Pryor, who was appointed by the three remaining administration trustees to fill the vacancy. A petition for the recall of Trustee Manus, who had survived all preceding attacks, was filed in January, 1925; but councilmanic action was postponed by friendly injunction proceedings. Mrs. Knox and Mr. Burkhardt, who had been elected at the special recall election in September, resigned March 28, 1925, just three days before a petition for their recall was filed. Mr. Pryor did the same thing in April.

This scheme was workable, however, only when there was a majority of four on the board, and in May, 1925, the combination was destroyed by the recall of Trustee Manus, the calling of the election having been forced by a writ of mandate from the county court. An attempt to counteract this attack by the recall of the minority member at the same time failed. It devolved upon the city attorney, therefore, to conceive some other means of repelling the recall attacks of the "outs," and this he did by keeping the next petition, which was filed in October, in litigation until annexation to Los Angeles ended one of the most extraordinary performances in the history of small-town politics.

Seal Beach.—The town of Seal Beach has been a close rival of Watts in its experimentation with the recall. The recall, in this beach metropolis, is indulged in with

an enthusiasm and an abandon that is in decided contrast to the rancor and dissension which its local use occasions. The frequent recurrence of recall agitation in this city is an indication, not so much that the municipal officials are disreputable or inefficient, as that the "outs" are firm believers in rapid rotation in office and have found the recall to be conveniently efficacious in expediting this policy. The local conditions propitious to the employment of this democratic device are ideal. The voting population is so small that the signatures of almost anyone's obliging friends and neighbors constitute a sufficient petition; the class animosity between the indigenous and itinerant sections of the populace of this typical resort town is always ready to assert itself; and the recall affords comparatively inexpensive and stimulating entertainment to while away the monotonous months when the beach is deserted and business dull. There is some complaint, however, that the last recall election absorbed $864 of the taxpayers' money, and that the aroused citizenry lacked sufficient time to cool off between encounters. The people of Seal Beach, as in other small towns, exhibited a natural reluctance in discussing their family quarrels with strangers, so the record secured of eight recall movements may be merely representative of many more instances that have failed to come to light.

The Recall Activities of Ex-Office Holders.—The most clear-cut instances of the predominance of personal animosity in recalls are those launched against councilmen by vindictive ex-office holders who have been summarily ousted from their positions. This applies especially to town marshals or chiefs of police. Dismiss an ordinary appointive official, such as a street superintendent or a city attorney, and it is taken more or less philosophically as a part of the orthodox scheme of rotation

in office; but let the council dispense with the services of a city marshal and it may have a recall war on its hands.

This phenomenon may have a logical explanation. The ex-police chief may be merely a henchman of the "outs"; but it is entirely possible that he has influential friends who have been thriving under his protection. Local bootleggers, junk dealers, pawnbrokers, receivers of stolen goods, as well as professional promoters of gambling and vice, who have prospered under his complaisant jurisdiction can be expected to show genuine irritation at having to make terms with a new incumbent.

Such conditions are especially prevalent in suburban areas that become the unwitting beneficiaries of the organized corruption which frequently permeates big cities. The odious situation that exists in many of the forty or more incorporated cities in the neighborhood of Los Angeles is a pertinent illustration. A professional class of chiefs of police rotate from town to town. An officer dismissed from Huntington Park, for instance, will turn up in a few weeks to fill a vacancy at Burbank. Occasionally a discredited Los Angeles police captain appears in the rôle of marshal in some nearby town. Where such appointments are made on the advice of influential individuals who profit by an organized traffic in stolen goods, or at the behest of a banking interest profiting in underworld activities, the appointee must be judicious in behalf of a protection-seeking citizenry lest he offend a more immediate master. City councils are thus made unknowing tools, and numb-minded police chiefs blindly follow orders in order to hold their jobs.[10]

Ex-Office Holders in Signal Hill.—An attempt which was made to recall two trustees and the city clerk of Signal Hill in 1927 seems to have been started by a

[10] For a good illustration of a recall involving such conditions see the discussion of the situation in Huntington Park, pp. 197-200.

small disgruntled element with little or no following, as evidenced by the fact that it took the recall agitators two months to procure 104 signatures. This element consisted largely of former officeholders and ex-city employees, together with certain persons who were opposed to the city's public improvement program or who opposed the continuance of the city's independent corporate existence. They charged the two trustees with "defiance of the desires and wishes of the citizens," with "inefficient and unequitable expenditure of city funds," and with using "the police and fire departments for political footballs."

That the movement was not a result of spontaneous and genuine disapproval of the three officials was indicated in various ways. Eighteen of the 101 qualified signers of the recall petition demanded the withdrawal of their signatures on the ground that the purpose of the petition had been misrepresented to them; affidavits were secured testifying to misrepresentation and fraud; and a petition protesting against the recall received four times as many signatures in five days as the recall faction had been able to scrape together in two months. The election resulted in the three men being sustained in office by a three-to-one vote.[11]

A Police-Promoted Recall in Azusa.—Trustee C. W. Beck of Azusa was recalled from office in 1927 after the most bitter political war in the history of the city. The election grew out of Mr. Beck's efforts to make the Azusa police department a self-supporting utility by eliminating from the force an officer whose arrests had produced an inadequate return in fines. A hostile majority in the council refused to stand back of him in the fight, and members of the police force and their friends swung into a bitter campaign against him, which was further stimulated by a certain indulgent attitude on Mr. Beck's part

[11] *Signal Hill Leader*, especially October 14, 1927.

toward matters not approved by the local organization of the Ku Klux Klan.[12]

Police Troubles in Covina.—The history of the use of the recall in Covina is the story of factional fights over changes in the police department. During the summer of 1922 some imaginary dissatisfaction arose over the city marshal and he was asked, without specific reasons, to resign. Having served the city faithfully for a number of years, he refused to accede to what apparently was a political move against him.

There was abundant opportunity for the marshal's friends to find other causes for resentment and criticism, and a petition was filed asking for the recall of four trustees. A week before the election the newly appointed marshal staged a "raid" at a ranch in charge of his predecessor which netted a still, which it was claimed, was "planted" especially for this purpose; and the raid turned the trick. There being no opportunity to reply to these eleventh-hour charges, the gullible public swallowed the story of the marshal's intimate relations with the bootleggers. The only election casualty was the recall of the city clerk, who had espoused the cause of the ex-marshal. The recall of the trustees was unsuccessful, not because of insufficient cause or justification, but largely because the men selected as possible successors did not inspire the necessary confidence.

Three years later there was a sequel to this recall with many of the same characters and a certain similarity of setting. The new marshal was still in office, but "Louie the Boss," was in temporary eclipse and the dissenting trustee of 1923 was now the president of the board. The new majority handled the problems of the city so constructively as to nullify numerous threats of recall by the

[12] *Los Angeles Times*, June 27, 29, 1927.
Azusa Herald, June 2, 9, 16, 23, 1927.
Azusa Journal, May 4, 18, 25, June 1, 8, 24, 1927.
Pomotropic, June 24, 1927.

"gang"; but in 1926 the dismissal of the marshal provided an opportunity to shift the balance of power.

The city marshal had grown increasingly arbitrary and defiant and finally resigned after a quarrel with the board. But one evening before his resignation became effective he assumed the duties of the old-time "bouncer" at the opening of a new pool hall and abusively ejected an ex-soldier on a false charge of being intoxicated. The victim, thoroughly incensed, persuaded the mayor, who was chairman of the police department, to investigate.

Four of the trustees decided to dismiss the marshal at the next meeting instead of waiting until the end of the month for his resignation to become effective. This session was packed with the "K.K.K.'s," the "Boss," and his friends. Catcalls, hoots, and shuffling of feet were used in an attempt to intimidate the board. The vote was taken—three for discharging the marshal, one against, and one not voting. Before the crowd dispersed petitions were being circulated for the recall of the mayor.

The mayor, in spite of the fact that he had proved himself to be not only a person of high moral character and integrity but an official of far above the average ability, was aspersed by narrow religious interests affiliated with the Klan and was recalled from office by a very small majority.

Banning.—The single experience with the recall of the small city of Banning demonstrates that it does not always require great issues of state to produce stirring political campaigns. A jarring personality, a matter of some one's private morals or religious convictions, a trifling controversy bearing only the remotest relation to the real problems of government, may ruffle the calm of a community as suddenly as a gust of wind, and fan into violent action all the irrational elements of human nature.

The recall movement was directed primarily against the president of the board of trustees. This official, a

successful local business man, was esteemed for his efficiency rather than his affability; and, consequently, was not especially popular. The trouble started over the conduct of the night watchman of a canning factory of which he was manager and part owner. It appears that the watchman, while engaging in a spirited verbal altercation with a group of boys who were passing the factory on the railroad track, became violently irritated and threatened them with a gun. They all succeeded in moving out of range, however, except one lad handicapped with a wooden leg who was grazed by a bullet.

The shooting was so inexcusable that the city marshal went the next day to the factory and seized the watchman's gun. The mayor paid scant attention to the popular demand that he dismiss his watchman; but about three weeks later succeeded in forcing the removal of the marshal. According to authoritative accounts, the deposed official had been elevated to office not because of any special fitness, but on account of long residence and dire need of a job. He was reputed to have numerous bootlegger friends, moreover, who profited by his benevolent inattention.

This shortcoming was overlooked, however, by a large faction that discerned a certain significance in the relation of the facts that the wife of the dismissed officer was a Catholic, the night watchman a Klansman, and the mayor himself suspected of a similar affiliation. The anti-Klan element sensed an opportunity to gain the political balance of power on the board, where they had a lone representative; so, with the aid of the agitated friends of the ex-officer and his family, circulated a recall petition demanding the removal of the mayor and one of his colleagues.

The charges in the petition were the conventional ones of incompetency and inefficiency; but the campaign devolved into a bitter religious feud accompanied by scur-

rilous personal charges of moral turpitude that set the whole town by the ears.

The more level-headed citizens, however, recognized that it was a case of personal spite rather than the existence of inefficiency in office; and the incumbents were sustained by a close vote, in an election in which nearly eighty per cent. of the registered vote of 750 participated.

CALEXICO.—Occasionally the situation is reversed and councilmen are recalled because of their failure to dismiss an unsatisfactory chief of police. The citizens of Calexico, a town on the Mexican border, ousted their entire board of trustees in 1927 by a two-to-one vote in a recall election in which the total vote cast of 663 represented over seventy-six per cent. of the voting strength.

Information as to the specific causes of the recall has been somewhat difficult to secure. There seems, however, to have been general dissatisfaction with the board, the strongest objection being to the retention of a city marshal who had been a storm center for several years. Mexicali underworld politicians were accused of a plot to thwart the movement, and it was asserted that a Mexicali saloon-keeper was responsible for the theft of one of the petitions.[18]

The somewhat unique charges in the recall petition are suggestive as to the issues that underlay the movement.

GROUNDS ON WHICH RECALL IS SOUGHT

That said Trustees have failed to establish and maintain public confidence in themselves as Trustees, have not intelligently planned or successfully maintained our City's progress, nor grasped present needs of the City, have destroyed civic harmony and discredited the laws and government of our City, State, and Country. That the finances of the City have become in a deplorable and alarming condition, with taxes and assessed valuations out of keeping with existing conditions. That the policy of the Police Department has been intolerable, with

[18] *Los Angeles Times*, April 12, 14, May 18, June 8, 1927.

constitutional rights of citizens jeopardized, and lives and liberty of citizens endangered. That the Police force and Trustees are so directly and personally interested in matters originating in Mexicali, that interests of Calexico receive secondary consideration when conflicting with interests of Mexicali, and that the Calexico Police Department is more under the influence of officials of Baja California, Mexico, than under the influence of Calexico's voters and taxpayers. That through illegal assaults, arrests, searches and seizures, a state of panic and fear has been created among the law-abiding element of said City and County, and visitors and tourists, and said City has suffered humiliation thereby, and its business, prosperity, and civic interests have been in part destroyed."

The trustees' statement denied every accusation. They claimed that they had maintained the lowest tax rate of any city in Imperial county, upon an assessed valuation "based on the most scientific system in existence"; and that they had not undertaken unreasonable improvements but had been handicapped by large sums of delinquent taxes. "We insist," they stated, "that this recall was instigated by a former City Attorney, who was discharged for justifiable reasons, and his friends, and based upon a dissatisfaction with our Police Department, which has since been eliminated."

Other Personal Causes of Recalls.—Three other contributing causes of recalls in which the personal element predominates should be mentioned. One such recall may beget another, either because of a recalled official's desire for revenge, or because the defeated faction hopes for a quick return to power. Threats of retaliation are always vindictive and frequent during recall campaigns. This influence has been evident in a number of the recall movements already described; and has been a more or less important factor in every town where the recall has had liberal use. Rival newspapers sometimes contribute to the confusion. In a small town where two

weekly journals struggle for existence, the official city printing and the advertising of large corporations favored by the majority of the council is a very much coveted prize; and the publication that fails to win official favor is always ready to encourage the machinations of the "outs." It is also a fact that recalls are occasionally stimulated and encouraged by indigent attorneys in search of employment. These professional recall agitators are sometimes so accommodating as to accept as a fee for their services the promise of a city attorneyship in case the incumbent is ousted.

The Klan Contaminates Local Politics.—During the last decade the baleful influence of the Ku Klux Klan has done much to pervert municipal politics in California. Its self-righteousness, intolerance, bigotry, and false patriotism, coupled with its barbaric terrorism, have obscured vital political issues, driven competent men from office, and honeycombed whole communities with rottenness and intrigue. It is only natural that many of the recall movements of this period should have been influenced by the activities of this sinister organization, and that a few should have been the direct result of its malevolent tactics.

Since the Klan undertook to defend the ideals of the Republic by other than legal means it did not immediately seize upon the recall as an instrument of reform; but in a number of instances, such as those already cited of Covina, and Azusa, the Klan has been a major factor both in instigating and promoting the recall of officials who failed to conform to their ideals of Americanism. Although fiery crosses no longer desecrate the hillsides nor inane symbols deface the highways, the Klan, as an undercover political organization, is still seeking to dominate local politics in many towns at the expense of the public interest. The beleaguered mayor of Hawthorne, where a recall movement directed against the entire coun-

cil in the spring of 1928 failed through the insufficiency of the petition, characterized the situation very expressively, when he avowed that, "The same —— —— gang that's after 'Al' Smith is after me." The dismissal of a Klan-controlled chief of police was an important item in precipitating the attack.

As a weapon for combating political domination by the Klan the recall has probably shown its most unexpected and unique utility.

Anaheim Recalls the Klan.—Anaheim's lone but memorable experience with the recall resulted from the alleged subservience of certain members of the board of trustees "to the influence of the officers of the local organization of the Invisible Empire of the Ku Klux Klan." This Klan pestilence descended on Anaheim with all the barbarous buffoonery that was characterizing its visitation of thousands of American towns and cities; and the good people of the community hastened to array themselves violently in two factions. Clubs separated, churches disintegrated, friendships were broken, people fought hand-to-hand conflicts on backdoor steps, and slander was spread with a lavish tongue.

In 1924 the Klan entered local politics and very adroitly slipped a number of its adherents into public office without their Klan affiliation being generally known. Such conduct in office, however, as the dismissal from the police force of all members who were not Klansmen, soon confirmed the suspicion that the city was under the sway of a "Klan Kontrolled Kouncil."

For this condition there was a locally untried but vigorous remedy, the recall. A petition was circulated demanding the recall of four of the five city trustees on charges which, while they referred vaguely to certain illegal and unrepresentative conduct in office, denounced mainly their subservience to the Klan. They were accused of permitting this organization to hold mass meet-

ings in the city park, "at which meetings numbers of our citizens and taxpayers have been insulted and held up to scorn and ridiculed by reason of their religious faith"; they had "permitted the Knights of the Ku Klux Klan in Klansmen's robes, to patrol the streets and direct traffic thereon"; and they "permitted and countenanced the defacing of the city streets by painted letters 'K.K.K.' and 'K.I.G.Y.' "

The formal answer of the four to these charges denied that they were controlled by the Klan in any administrative policy; declared that the only request ever received from that organization had been "to impartially enforce the law," which was in accord with their own desires; and "pointed with pride" to their conduct of the city's business "as proof of our fitness to be continued in office."

The Klan, unwilling to be entirely outmanoeuvered, started a counter-recall against the lone member of the board of trustees who had withstood the glamour of the organization. He was charged in the petition with failure to coöperate with the other members of the board; with wilful refusal to sign certain financial demands connected with prohibition enforcement; and with being generally incompetent because of indifference and neglect of duties. In his formal justification of his course in office he declared his lack of coöperation with the rest of the board to be based on their adoption of a secret policy, explained the illegality of the demand from which he had withheld his signature, and made a categorical denial of general incompetency.

Never did a community participate more enthusiastically in a political campaign. The Chamber of Commerce, unanimous to a man, published a statement that they were against Klan rule because of its disastrous effect on business alone. The Elks, Masons, Kiwanians, Lions, and Rotarians concurred heartily in this sentiment. In the *Anaheim Bulletin* for January 5, 1925, the U. S. A. Club (an anti-Klan organization with a bone-

dry platform) explained that from a business standpoint the city's condition, as a result of Klan rule, was deplorable. Several industries had refused to locate in Anaheim because of Klan domination; home builders kept away for the same reason; investments were falling; real estate would not move; business was stagnant; building permits had dropped from $186,132 in January, 1924, to $24,470 in January, 1925; and distrust, hate, and suspicion were rife throughout the community.

The Ku Klux Klan, in its campaign, concerned itself chiefly with the public and private morals of the community. It was charged that the city was in the hands of the bootleggers; a series of intimate scandals about certain prominent citizens who had failed to affiliate with the Klan organization was published; and intimidation was attempted by means of threatening letters.

At the special recall election ninety-three per cent. of the entire registered vote took advantage of the secret ballot to express its sentiments in comparative safety at the polls. The four Klan protégés were removed from office by a vote that averaged approximately 2,300 to 1,800, and the vacancies filled by the election of the anti-Klan candidates. The non-coöperative fifth member of the board was sustained in office by a vote of 2,199 to 1,792.

While the election brought Klan political control in Anaheim to a very definite conclusion, echoes of the fight continued for two years in the form of a series of unsuccessful lawsuits and counter-suits for perjury, libel, and malicious prosecution.[14]

[14] In 1922 a trustee and a city clerk of Taft were recalled, not because of any misconduct in office, but because of their reputed membership in the Ku Klux Klan. The attempted recall of two Colton trustees in 1926 is another typical illustration of the use of this weapon by the anti-Klan faction to escape political domination by the knights of that intrusive order. The movement failed, in this case, because the local business men, irrespective of their personal opinions regarding the Klan, took the attitude that the recall was bad for business and did not support it.

Recall movements in which motives other than personal have been predominant have been the more numerous, and are the more illustrative of the intended uses of the recall. It can be said, in general, that such recalls relate themselves either to the character, morals, and personal conduct of public officials, or to matters of public policy.

The Recall and the Personal Morals of Officials. In view of the conscientious responsibility which citizens of small towns often assume with regard to one another's private morals, it is surprising that but few recalls have had as a dominant motive the minor moral delinquencies of officials. This may result from a reluctance to air officially a *scandalum magnatum* of an opponent for fear of reprisal; but no such hesitancy is manifest in the spreading of surreptitious charges of moral turpitude in the heat of recall campaigns.

A clear-cut instance of this use of the recall occurred in Chino, a pleasant little country village isolated from the commotion and frenzy of urban life in the midst of a rich farming community under the shadow of the San Bernardino mountains. The people take their local political problems seriously, and only once in the history of the city's corporate existence has it been necessary to resort to the recall of a public officer.

In the judgment of a number of the leading citizens a member of the board of trustees, who in many ways was a really estimable person, had conducted himself in a manner unbecoming a gentleman and a public official and was no longer worthy to hold office. Sixty-three signatures, which was more than the necessary twenty-five per cent., were secured to a recall petition; a special election was promptly held; and the offender was voted out of office.

The petition itself, still carefully preserved in the well-ordered archives of the city hall, sets forth the reason for

the recall even more colorfully than the present recollections of the citizens who led the movement.

To the Board of Trustees of the City of Chino,
County of San Bernardino,
State of California.
Gentlemen:

The undersigned petitioners hereby demand the election of a successor to John J. Houlihan, a member of the Board of Trustees of the said City of Chino.

This recall is sought on the ground that the said Houlihan is guilty of conduct unbecoming a gentleman, a citizen, and a public official, as follows, to wit.:

At a mass meeting held in the said City of Chino on March the first, 1912, for the purpose of discussing questions of vital importance to the citizens of the said City of Chino, and in the presence of more than one hundred persons, a number of whom were women, the said John J. Houlihan, becoming angry, in a loud and boisterous manner, used vile and profane language; also removed his coat and threatened to fight and otherwise acted in a manner unbecoming one in his official capacity.

Dated this 11th day of March, 1912.

Malfeasance in Office.—Recalls based primarily on the ground of malfeasance in office have been almost as infrequent as those resulting from laxity in personal morals. This is reasonable and proper, as the courts are available for the removal and punishment of officials who are clearly guilty of serious misdeeds. The recall has been resorted to on a few occasions when the evidence of wrongdoing, while not sufficiently conclusive to convict in a court of law, has been strong enough to convince at least a portion of the electorate that the suspected officials were no longer dependable.

In 1918, for instance, two trustees of Taft were accused of profiting financially from the letting of a sewer contract. The trouble arose over the sale of the sewer

bonds. The city, according to law, was required to sell its bonds at par. The bond market was in such a state of indigestion, however, that in order to meet this technicality of the law the council arranged to buy the sewer pipe where they sold the bonds. Although there seems to have been no conclusive evidence of dishonesty, the two trustees were recalled.

A recall movement that emphasized charges both of malfeasance and of immoral personal conduct stirred the town of South San Francisco in 1925-26. The campaign was hot, the interest keen, the interchange of political pleasantries animated and calumnious, the vote heavy. Out of the haze of campaign innuendo, however, loomed the fact of general dissatisfaction with the administration. The charges in the petition, which were unusually specific, suggested the existence of a condition of corruption and moral turpitude in official circles that had thoroughly scandalized the good citizens of the community. It was asserted that:

> During a portion of the time within which said Carl Blank has held the office of trustee of said City of South San Francisco he held the office of and performed the duties of plumbing inspector of said City of South San Francisco in violation of law. . . .
>
> During a portion of the time within which said Hugh McCaffrey has held the office of trustee of said City of South San Francisco he has been a member of a co-partnership doing business under the firm name and style of South City Grading Company and said Hugh McCaffrey and his co-partner have, as such co-partnership done and performed work of cleaning weeds upon the public streets and avenues of said City of South San Francisco and have received compensation therefor out of the public treasury of said City of South San Francisco and said Hugh McCaffrey has been interested in doing said work of cleaning weeds in said City of South San Francisco in violation of law. . . .
>
> During the time within which said Hugh Felix McNellis

has held the office of trustee of said City of South San Francisco he has repeatedly appeared upon the public streets and avenues of said City of South San Francisco in an intoxicated condition.

The election was held May 17, 1926, and all three officials voted out of office.

THE RECALL AND QUESTIONS OF PUBLIC POLICY

The recall movements thus far discussed have included those in which personalities and factional differences have been paramount, those that have resulted from the moral lapses and official misconduct of public officers, and those that have been engendered by the machinations of the Ku Klux Klan. Those arising primarily from questions of public policy remain to be considered.

Controversies in which questions of public policy have played a leading part have been responsible for a majority of the recalls in small cities. They involve directly the problem of representation and the responsiveness of public officials to the will of the people. A city councilman, during his four-year term in office, may become arbitrary and dictatorial, he may show partiality to one faction or section of the city, he may deviate widely from the platform on which he was elected, or he may guess incorrectly on some issue over which the electorate is sharply divided. It may even happen that a number of his original supporters reverse their views as to the desirability of some policy and he fails to concur in their change of mind.

The most justifiable uses of the recall result from such situations. Discounting the shortcomings of public opinion, there are many questions of local government in which the electorate is entitled to a decision not only on the basis of theoretical democratic rights but on the grounds of personal interest and concern. When a public officer acts contrary to the expressed wishes of any large portion of his constituency, or functions without trou-

bling himself to ascertain their desires, it is highly desirable, if representative government has any meaning whatever, that they at least have the opportunity to hold him responsible for his conduct.

Recalls Resulting from Arbitrary Official Action.—The function of the recall in suppressing the arbitrary action of public officials is well illustrated in the case of Modesto. One of the special privileges possessed by the citizens of Modesto under their freeholders' charter is the right to recall members of the school board. They exercised this privilege with great enthusiasm in 1926 in recalling three school directors who had exceeded their authority and adopted certain policies without taking the trouble to consult their constituency. Among other things they had taken an option on land outside the city limits for a new high school and had proceeded with plans for the organization of a junior high school without securing public approval. Their defense, that "we never intended to change the location of the High School without the approval of the people," and "even if it (the junior high school) was not formed in strict compliance with the law, should I be blamed for the legal mistakes of a lawyer," had little or no effect on the feelings of the irate taxpayers, and the trio went out of office by a vote of approximately 1557 to 645.[15]

Santa Cruz.—An attempted recall of four Santa Cruz commissioners in 1924 illustrates how such a movement may arise from councilmanic partiality and favoritism.

The recall of these commissioners was sought on the

[15] The attempt to recall the entire board of trustees of El Paso de Robles in 1921 was a result of opposition to the board's public improvement program. While the plans of the board were reasonably forward looking and constructive, lack of information on the part of the public resulted in bitter hostility. Although the movement failed, it did have the effect of halting the high-handed tactics of the trustees and of rendering them more responsive in their attitude.

The entire board of trustees of East San Diego were recalled in 1923 because they adopted a project to purchase a water system which less than six months before the people had voted down.

grounds that they were proposing to spend the proceeds of a bond issue without the knowledge and approval of the taxpayers, that they were extravagant in the expenditure of public funds, and that one of the commissioners lacked moral courage and was dominated by the mayor.

The real basis for the recall seems to have been the dissatisfaction of one section of the city over its failure to secure its anticipated share in a certain local improvement project. The preceding administration, in providing for the expenditure of $400,000 which had been voted for the construction of a water supply system, had arranged for a reservoir in East Santa Cruz and other benefits to the people residing in that part of the city. When the new administration came into power other plans were made which included no provision for the East-side reservoir. This led to a movement in East Santa Cruz for the recall of the mayor and three other commissioners.

As the campaign for the recall developed, fault was found with one commissioner on another score, his conduct of the department of police of which he was head, and his retention in office of a somewhat unpopular chief of police. This commissioner only was recalled.

By a four-to-three vote, in an election which attracted the largest number of voters in the history of the city, the commissioners, with this one exception, were sustained in office. The vote in the case of the recalled commissioner was so close that he demanded a recount; which, however, failed to alter the result.

Moral Issues and the Recall.—Questions of public policy involved in recalls have been of two types, one relating to the issue of an "open" as opposed to a "closed" town, and the other to the financial and public improvement problems which are the great concern of the taxpayer. One concerns the voter's pocketbook, the other his ideas of community morality and virtue.

The average voter does not permit himself to become unduly excited, as a rule, over the enforcement of "blue laws" and the suppression of vice in its various forms. While he is vaguely aware of the existence of such lawlessness, he is inadequately informed as to the extent of its ramifications and of official responsibility for its continuance.

The recalls that had their origin in such issues have been initiated and promoted both by crusading reformers and reform organizations and by persons who have had an economic interest in the laxity of law enforcement. One group has used the recall in an attempt to oust officials who have been over-tolerant toward the existence of gambling, bootlegging, and vice, or liberal on the subject of late and Sunday operation of dance halls, pool halls, and motion-picture houses; the other faction has resorted to the recall when an austere council has closed the lid on its profitable operations. In the limited number of instances in which the recall has been thus used, the unprincipled liberals have found it more efficacious than have the reformers.

The first use of the state law of the recall resulted, apparently, in a victory for the "wets." Three members of the board of trustees of the city of Colton were recalled in 1911 on the grounds that they had voted unauthorized expenditures and had refused to grant liquor licenses.

The reform element of Tulare met defeat on a moral issue in 1924. The city manager instituted, on his own initiative, a law enforcement campaign against the operation, by local merchants, of certain games of chance. This action so irritated the council that they summarily discharged him. The law enforcement element promptly circulated a petition for the recall of those members of the council who had voted for his dismissal. After litigation which required the circulation of a second petition,

an election was called, the outcome of which was the retention of the councilmen in office by an overwhelming majority of about four to one.

A fundamental politico-moral issue in beach resort towns is that of the degree of "wide-openness" which should be tolerated. Seal Beach, with its record of eight or more recalls, illustrates the possible gravity of the issue. The electorate of this municipality is plunged into turmoil periodically over the question of whether to sacrifice morals or business. In 1923, for instance, the "liberal" party manoeuvered itself into control of the board of trustees by means of a recall election and promptly ousted the city attorney and certain other officials who had been placed in office by the conservative element. The attorney, in presenting his resignation, denounced the party in power as "opposed to decent government. Its one demand is for unlimited license in all city affairs." [16] A spokesman for the liberals declared that it was not an issue between wet and dry factions, but one of progressivism versus decadence.[17] On another occasion a righteous trustee was aspersed by the liberals in a recall petition for having "by his actions as a member of said Board caused said City to become a joke to people of the community and outsiders," and because "he has no business judgment or foresight as to what matters are of benefit to said City." In the last three recall campaigns certain café owners whose places had been raided by the local police, or whose licenses had been revoked, were among the chief instigators.

PUBLIC IMPROVEMENT POLICIES AND THE RECALL

Dissatisfaction over the treatment by city councils of related problems of finance and public improvements has contributed more than any other single factor to the use

[16] *Los Angeles Times*, November 8, 1923.
[17] *Ibid.*, November 9, 1923.

of the recall in small cities. No matter how neglectful of his civic duties a citizen may ordinarily be, when his taxes and special assessments become due he is painfully aware of at least one governmental obligation he cannot escape. In former days, when the cost of maintaining the limited functions of government was comparatively low, the taxpayer was inclined to be uncritical and resigned; but more recently, when the rapidly mounting cost of government to care for new functions and lavish public improvements is threatening to deplete his pocketbook, he has become increasingly critical and suspicious of the officials who levy the rates.

The Sausalito Recall, 1924-25.—The experience of Sausalito with the recall in 1924-25 illustrates the taxpayers' state of incipient irritation. The movement is described in some detail because the issues involved are characteristically diversified, and many of the latent possibilities in the operation of the recall exhaustively developed.

The trouble began when the town trustees hired one James Stafford of Oakland to do some special work on reassessment of property. Stafford raised the assessed valuation from two and one-half million to six million dollars and collected a generous fee for his efforts. When the results were announced a storm of protest broke upon the town fathers and two suits were instituted in the courts; one to restrain the town clerk from collecting taxes on the new valuation, the other to compel the trustees to pay Mr. Stafford from their own pockets on the ground that the work should have been done by the regular assessor.

This led to an attempt to circulate recall petitions in November, 1924; but the movement failed. Early in 1925 the mayor, who was one of the trustees involved, was indicted by the federal grand jury for alleged

activities in rum running at a place called Moss Landing. The effect of this was to spur his old enemies, and a petition for his recall and that of three of his associates was again started.

The petitions deviated from the ordinary practice of presenting vague and general charges by drawing up a complaint which was unusually detailed and specific. The essential points in the charges were:

They are wholly incompetent to perform the duties of trustees.

They have retained in office Town Engineer A. A. Peters "who is wholly inefficient and incompetent as said Trustees well know."

Public money has been recklessly and extravagantly expended by them.

They have overburdened the taxpayers with unnecessary taxation.

They have been insulting and abusive to persons addressing them in public meeting.

They are guilty of malfeasance in office as follows:

(*a*) That they and each of them wilfully and illegally on the 11th day of July, 1924, at a regular meeting of said Board of Trustees, by their votes ordered a warrant drawn on the Treasury of said Town, in favor of said A. A. Peters, in the sum of $4,000.00, with a promise to pay the same in the month of December, 1924, for pretended work done by said Peters in assessment district "C" of said Town, and did cause said warrant to be delivered to said Peters.

(*b*) That they and each of them on many occasions, wilfully, unlawfully, and illegally voted to allow and ordered paid out of the General Funds of said Town, said claims not being itemized and being in the aggregate in the sum of many thousands of dollars.

(*c*) That they and each of them wilfully, illegally and unlawfully voted to pay to one James G. Stafford, a deputy assessor of said Town, the sum of $3,500.00, for ascertaining the cash value of real property in said Town for assessment

purposes, when said duty was by law ordered to be performed by the assessor of said Town.

They have "openly and defiantly disregarded the laws of the State of California, and the rights of the people of said Town" and are "unsatisfactory and undesirable to the community."

So much for the official reasons. An equally influential reason seems to have been one Luis Pistolesi, whose political resentment had been smoldering for some time. The mayor explained the situation thus: "The threatened recall is a political frame-up. Three years ago I ran for office at the urgent request of numerous citizens and defeated Pistolesi who had been a trustee for seventeen years. Since that time he has seized every opportunity to discredit the Board."

The two men had frequently been at odds on other matters; and as Pistolesi was responsible for the circulation of both petitions, it looked very much as though there were a personal feud between himself and Mayor Madden. Though the rum charges against the latter were not mentioned in the grounds for his recall, Pistolesi and his faction made good use of the federal indictment in getting signatures.

It is also interesting that much of the opposition to the recall election was based on the expense of a special election, the argument being advanced that the regular election would come in the following April. Madden, however, insisted on the special election, which was set for September 11, 1925.

The election campaign was unusually hot, even involving a brawl between Pistolesi and Trustee Lowe. The vote was heavy and the outcome sustained the incumbents by a narrow margin.

	Lowe	*Ammerman*	*Madden*	*Mahaffy*
For recall	498	453	468	504
Against	552	583	586	542

Following the election Engineer Peters and Trustee Lowe filed libel suits for $100,000 each against Luis Pistolesi and four of his associates in the recall proceedings. The action was based on alleged libelous statements in the recall petition, specifically those referring to the relations of Peters and the trustees. It was the contention of the plaintiffs that these statements were libel *per se*. A demurrer to the complaint in both actions, however, was sustained by the trial judge on the ground that he regarded such statements as privileged. The actions were not appealed, however, so there is still no decision from a higher court of the state on the interesting and vital question of whether charges in recall petitions are subject to libel.[18]

The Perplexities of Mushroom Growth.—Factional disputes over questions of finance such as inflamed the taxpayers of Sausalito might occur anywhere in the United States as an accompaniment to the generally increasing cost of municipal administration. But there has arisen in many California cities in recent years a special reason for the prevalence of such issues. The rapid influx of population, while it has actualized the Utopian dreams of realtors and chambers of commerce, has not been conducive to the smooth functioning of local government. A majority of the forty-seven recall movements that have disturbed the political equilibrium of small cities within a radius of thirty-five miles of Los Angeles from 1922 to 1928 have been symptoms of acute growing pains in this rapidly developing area.

A town that triples or quadruples its population in less than a decade, as a number of California cities have done, is like an overgrown boy who is constantly outgrowing his clothes. The family exchequer must bear the strain of new equipment that is both more extensive and more pretentious. The village water system must

[18] See *below*, pp. 324-325.

be rebuilt to supply the newest "subdivision"; the two-man police department maintained by speeding motorists no longer insures law and order; the dusty roadways fail to accommodate the swelling traffic; and new quarters must be provided for the expanding administrative personnel. It becomes unmistakably apparent to the progressive citizen, also, that the public-school buildings that inadequately housed five hundred children have no magical elastic power to absorb several times that number. These and many other essentials that normally could have been cared for over an extended period of time must be kept abreast of the city's abnormal growth.

When the devout prayers of the local chamber of commerce are answered and the "boom" arrives, the enthusiasm of the booster element knows no bounds. Civic pride is stimulated by the members of the realty board and other public-spirited citizens and the ambition develops to become a city in appearance and bearing as well as in size. The local "go-getters" crave the ostentation of imposing city halls, miles of concrete pavement, and more miles of dazzling ornamental lights that will outrival the charms of all neighboring towns. Glamorous slogans proclaiming some special aspiration or distinction are posted along the highways to catch the eyes of all possible prospective citizens. The item of increased tax rates and special bond issues is submerged in the general optimism, or in the sanguine expectation that the burden can be passed on to the latest arrivals.

Such ambitious programs never meet with unanimous approval. Some unprogressive or prudent faction always appears at an inopportune moment to offer violent opposition, or to suggest the wisdom of harmonizing the desires of the community with its pocketbook. Differences of this sort have formed the basis for more than one political conflict.

Oceanside.—The recall activities that stirred the town

of Oceanside in 1925-26 hinged upon a controversy between so-called reactionary and progressive elements over the desirability of certain public improvements. The trouble started over the voting, by the trustees, of an increase in the business license tax to take care of the depleted condition of the treasury. This apparently necessary step was naturally unpopular; but a referendum on the measure failed by a large majority.

A group made up of realtors, speculative holders of local property, and others who had visions of a greater Oceanside were agitating, meanwhile, for a $100,000 issue of bonds for a new pier to replace the dilapidated structure that was disgracing the ocean front. A majority of the trustees were of the opinion that the city's very inadequate water storage facilities should be cared for first; and the construction of the pier be delayed, or at least be of a less pretentious nature than proposed.

Because of their stubborn insistence on this cautious policy they were branded by the progressive element as a set of "mossbacks" who were preventing the city from developing with the rest of Southern California. One member of the board, a brusque Scotchman who knew more of political economy than he did of tactful politics, was the special object of their antipathy. They fostered a movement for his recall, and after a campaign that was typically turbulent he was sustained in office by a two-to-one vote.

The failure of the recall by no means closed the controversy. After waiting for the expiration of the six-month period which they apparently supposed was called for by law, the same group circulated another recall petition. It was directed against the same trustee and one of his colleagues. By this time, however, the board had heard that there were methods of obstruction by which recall elections could sometimes be postponed or entirely avoided. They secured the services of an attorney who

had rescued the trustees of a city further up the coast, and were able to delay action on the calling of an election until after the regular municipal election of April, 1926. At this election the expansionists succeeded in gaining control of the board and the two remaining members of the old guard promptly resigned.

THE PROBLEM OF PUBLIC IMPROVEMENTS.—The community that is a village today and a city tomorrow faces a real problem in projecting its program of public improvements. The wrangling of the conservatives and the progressives has its humorous side; but this fails to obscure the seriousness of the situation. Five well-meaning political mediocrities, serving as councilmen without compensation, must handle a problem of administration and finance that would tax the ingenuity of experts, and a muddled and comatose electorate must pay the bills.

The actual situation in a typical town develops thus:

Population, 1920 1,169		1928 (est.) 4,500	
	Assessed Property Valuation	*Municipal Taxes*	*Payments on Special Assessments Which Have Gone to Bond*
1920	$ 799,003	$16,103	
1921	812,152	16,122	
1922	990,109	18,279	
1923	1,148,099	24,870	$ 14,739
1924	1,896,009	43,831	18,061
1925	2,142,425	46,192	25,539
1926	2,267,000	59,032	33,394
1927	2,613,000	60,049	69,342
1928	2,750,000 (est.)	63,000 (est.)	127,000 (est.)

The figures indicate that while the *per capita* tax bill has increased only slightly from 1920 to 1928, the annual charge against the property owners for public improvements which they have been unable to pay for in cash has risen from nothing to double the tax bill. About thirty per cent. of the cost has been paid in cash, so is not shown here. One effect of the rapid improvement program represented by these figures was to throw on the market some six hundred pieces of real estate, the owners

of which were unable or unwilling to meet the assessment charges. This resulted in temporary depression of realty values in many parts of the city. A few years ago recall movements in this town were directed against officials who held out stubbornly against a hasty program of public improvements. In 1928 certain installations of patented paving were in an advanced stage of dilapidation before the work had been half paid for by the property owners; and while a favored contractor is still promoting petitions for further public improvements, the city is approaching serious financial difficulties. Conditions are now ripe for the launching of recall movements against the promoters of "progress."

The predicament of the citizen-taxpayer-property owner, under such conditions, is immediately apparent. His tax bill, inflated to care for interest and sinking fund on general bonds, is only a small part of the emergency burden he must assume. It is the common policy in California cities to finance such improvements as paving, ornamental lighting, sewers, and storm drains by special assessments levied against the property owners of the benefited district. While payments may be extended over as long a period as thirty years, the financing is customarily cared for by ten-year amortization bonds bearing a seven per cent. interest rate. Without discussing the merits of this policy, it is evident from a comparison of the figures that this may be the straw that breaks the small taxpayer's back. The wage earner whose entire fortune is invested in his partially paid-for home is likely to be confronted with an unanticipated charge which his limited budget totally fails to cover.

Machinations of the Corporations.—If these mushroom cities could have been left alone to work out their problems of expansion there would have been blundering, petty graft, and factional squabbles; but a passably enlightened self-interest would, in the majority of cases,

have insured reasonable success. Unfortunately, instead of being permitted to judge their own needs, they have been preyed upon and victimized by powerful outside interests who could see nothing in the chaotic situation except an unprecedented opportunity for large profits. The unctious representatives of rival patented paving companies, Portland cement interests, pipe and tile manufacturers, ornamental lighting standard companies, utility corporations, and their allied bond houses, finance corporations, and satellite contractors descended on these unsuspecting towns to bedevil or corrupt public officials, or "high-pressure" an untutored public into greater and more lavish expenditures.

Under the laws of California [19] a city council has almost dictatorial power in installing a wide variety of public improvements and in charging the bill to the property owners of the "improved" district. A council may, without any petition from property owners, order the paving of a street, the installation of an ornamental lighting system, the construction of a sewer, storm drain, or other similar improvement; determine the specifications and materials to be used; and fix the limits of the district to bear the expense. The only significant limitations of its power are the requirements to post notices of intention, allow a minimum of fifteen days for protest, advertise for bids, and let the contract to the lowest "responsible" bidder. It may even ignore, by a four-fifths vote, a majority protest of the property owners affected. It is not to be wondered, therefore, that city councils have received marked attention from corporations that thrive on public improvements.

The nabobs of big business, in mulcting the public through its government, long ago abandoned such crude

[19] Most of the street improvement work in California cities is done under the Improvement Act of 1911, California Statutes, 1911, p. 730.

methods as the outright purchase of legislatures and city councils. Their tactics today are far more smooth and efficacious. No great corporation expects the exclusive "ownership" of any set of public officials. All that each of the big competing interests can hope for in the long run is its fair share of favors; so its policy is to maintain a sort of good-will insurance by keeping officials in a friendly mood.

The cultivation of a friendly attitude begins in the election campaign. The big interests make themselves indispensable at such times, for they regard it as a normal function and duty to finance the campaigns of council-manic candidates. No one corporation undertakes to carry the total burden for any candidate, but contributes its fair proportion with the knowledge that the others are doing the same thing.

The predominant type of public official, once he is in office, does not constitute a major problem for these corporation gentlemen. The blandishments and cajolery of their suave and congenial "public relations" experts are so flattering to the well-meaning but somewhat bewildered official that he can be kept in a receptive frame of mind at very little effort and expense. Little favors make him feel under great obligation. An occasional dinner, an opportunity to hobnob with the great or near-great, a quart or two of "Scotch," or a set of golf clubs will be good for votes for months on end. Good will is maintained, in other words, by clever but comparatively inexpensive lobbying.

This sketch of corporate political efficiency, while fairly representative, is subject to variations and exceptions. A town may, for a period of years, become the feudal domain of a single paving company; and sizeable "commissions" have been said to pass from the hands of corporation agents to the pockets of political officials or their

"representatives" on numerous occasions. But such clumsy methods have largely given way to the newer and smoother technique.

The interests in California that are thus concerned with developing business through stimulating public improvements have far-reaching alignments. Each of two rival banking groups watches over the destinies of numerous industrial progeny and must keep them in a healthy condition. Among the enterprises under the guardianship of one are major oil companies that produce large quantities of asphalt, large clay-product and rock and gravel companies, important public utility interests, and allied finance companies and contractors. The other banking group presides over a similar aggregation of interests with an important exception that for asphalt is substituted Portland cement. Most of the newspapers of the state have affiliations with one or the other of the two groups. While there is no ironclad combination, there is unity from the point of view of finance, interlocking directorates, and in maintaining pressure to keep improvements moving.

The extensive political operations of the paving interests illustrate how the public is served. Two powerful groups, the asphalt, or "black," group, and the concrete, or "white," group, compete for the business of the state. Standard Oil of California, the Union Oil Company, and the Pan-American Petroleum Company are the three great asphalt producing companies. To "create a market" for this important by-product they maintain political organizations that permeate from the State Highway Commission to the unpretentious city hall of the remotest hamlet in the state. Comity rather than competition seems to be their motto in keeping steady the flow of asphalt into the highways and byways of California.

Contributing still further to the popularity of "black"

paving are a number of glorified contracting concerns that control patented paving processes such as Warrenite, Willite, Nationalite, Tarvia, and several others. The extra charge for their exclusive processes they are able to demand enables them to follow the same tactics as the oil companies. The Warrenite organization, in fact, is second to none in the thoroughness with which it covers the state.

The Portland cement interests are just as indefatigable in cultivating a market for concrete paving. Until recently a concrete pavement was a concrete pavement; but the market is now receiving additional stimulus from the owners of patented processes such as Vibralithic which first lays the mixture of sand and cement and then jiggles in the rock with a vibrator.

The creation of a market for asphalt, cement, and sundry patented processes is the first part of the game. Next comes the swarm of contractors who must bid for the actual work of installation. Even when a council strives to comply with the spirit of the law that requires the awarding of contracts to the lowest "responsible" bidder, the result is not always in keeping with the law's intent and purpose. When patented materials or processes are specified for an improvement, in order that there may be a semblance of competition and that the validity of the improvement cannot be questioned, the owner of the patent rights files with the city a license agreement. This agreement guarantees to the city and all contractors who desire to bid, the right to use the patented material or processes upon the payment of a fixed royalty. But in almost every case the favored contractor is secretly guaranteed a much lower price than that quoted in the license agreement. To further this semblance of competition accommodating contractors (often at the request of the owner of the patent) submit bids carefully graduated upward from the predetermined bid of the chosen con-

tractor. These obliging contractors are taken care of by later improvements.[20]

To the market-creating facilities of the three big oil companies, the Portland cement interests, the owners of patented paving processes, and their satellite contractors, add the similar propaganda equipment of ornamental lighting standard companies, light and power corporations, clay and concrete pipe companies, and numerous other corporations, and the cumulative result is a more formidable army of parasitical lobbyists hanging around city halls than in the palmiest days of the Southern Pacific machine.

Until 1927 it was the common practice of city councils to vote public improvements without bothering with petitions from the property owners. The lobbyists, under this benign dispensation, dealt directly with public officials. This practice placed such an exceptional opportunity in the hands of the envious "outs" to stir up the sincere opposition of the oppressed property holders, that more recently many councils have been demanding the formality of some kind of petition before initiating an

[20] Resolution Relative to Patent Paving of the Los Angeles Chamber of Commerce:—

Whereas, the Los Angeles Chamber of Commerce has been furnished with data from responsible sources indicating that patented pavement costs the property owners of this city substantially more than unpatented pavement, and

That when grading, curb and sidewalks are let in the same contract with patented pavement, these items cost more than when let in a contract with unpatented pavement, and indicating

That the owners of patents have ways of restricting the bids to four or five contractors approved by them, thus preventing any real competition.

Therefore be it resolved, That if these statements are correct, the Los Angeles Chamber of Commerce urges the Honorable City Council, in justice to the property owners of this city, to entirely exclude patented pavements from use in Los Angeles, pending the report of a board of competent engineers.

I hereby certify that the above is a true and correct copy of resolutions adopted by the board of directors of the Los Angeles Chamber of Commerce at the regular meeting held August 28, 1924.

WILLIAM LACY, President.
FRANK WIGGINS, Secretary.

improvement project. The custom of insisting on majority petitions is gaining popularity. This has necessitated a change of tactics on the part of the companies. They now maintain corps of professional "petition-pushers" who solicit the signatures of unwary property owners; or they stimulate, at $10 a day, the public spirit of well-known boosters in local improvement associations and civic leagues. Under the present dispensation the hustling representatives of the rival "blacks" and "whites" descend on a district which they feel is entitled to life's better things, and all the council needs to do is to act on the petition that comes in first. Under this developing practice the people make full decision themselves, —and democracy is again restored!

When a dazed public is presented with the bill it realizes that something unforeseen has happened but it does not know how it came about. The situation demands an outlet for a righteous and burning resentment and the harassed council is likely to receive the full benefit of the blast. The "outs" never overlook such golden opportunities to bid for a return to power, and the public improvement interests who have failed to gain the favor of the incumbent majority are always ready to aid and abet a political change. It is under such circumstances that the "gun behind the door" becomes a thundering blunderbus in the unsteady hands of a citizenry sufficiently irritated to blaze at any suspicious target, and sometimes it goes off in the right direction.

Hermosa Beach.—Controversies over public improvements have played a prominent part in all of the five recall storms which Hermosa Beach has succeeded in weathering since 1923; and in the last recall have run the gamut of all the fertile possibilities of this issue. Among the *dramatis personae* of the 1927-28 recall movement, according to its promoters, were a patented paving company, an ornamental lighting standard company, an

electrical subsidiary of the Southern Pacific Railroad, a great light and power corporation interested in increasing its sale of energy, a bank concerned in the disposal of improvement bonds, an associated newspaper, and a controlled councilmanic majority. All of these characters were in evidence, but how important a rôle each played is not entirely clear.

The recall campaign of 1927-28 was an attempt to remove Mayor Hagenbuch and two of his councilmanic colleagues, Woodland and Heath. Underlying this action was the series of disputes over public improvements which had frequently embroiled the Hagenbuch group with the faction represented by the minority councilmen, Holston and Yost; but the immediate cause of the movement was the voting by the three majority councilmen of an expensive street improvement program under circumstances that antagonized a large group of property owners.

The council, on September 13, 1927, adopted a resolution of intention to pave and adorn with ornamental lights the main boulevard of the city, at an expense to the 1,300 property owners of the district of approximately $350,000. Although no petition for the improvement had been presented, October 4 was set as the date for protest, allowing little more than the minimum time set by law. In spite of the fact that many of the property owners concerned resided elsewhere except in the summer season, the resolution of intention declared expressly that "the City Council does not deem it advisable for the Clerk to mail copies of the Notice of Improvement to the owners or reputed owners, and he is not required to mail the same." [21]

When the council met on October 4 to hear protests, the signatures of only sixteen per cent. of the owners had

[21] Minutes of the City Council of Hermosa Beach, September 13, 1927.

been secured for a petition of protest; but the council chamber was filled to standing-room capacity and no one spoke in favor of the improvement except a representative of one of the patented devices it was proposed to install. When the news spread hundreds of protests poured in, but too late to be of legal effect; and the mayor and his two colleagues ignored the clamor of disapproval and awarded the contract.

The opponents of the project, finding the council had no intention of considering their demands, sought by legal action to enjoin the performance of the contract. Certain statements in their complaint reveal the whys and wherefores for the suspicion with which they regarded the scheme.

Their disapproval was directed in part at the way in which the materials had been chosen. In selecting the type of pavement the council had chosen a patented product, which had the effect of excluding competitive bidding and, according to the protestants, of unnecessarily increasing the cost by $30,000. "Said patented method," they explained, "is marketed, and pushed, and promoted by the owner of the patent, which accounts for the additional cost to cover the cost of promotion; whereas the unpatented method is not pushed or promoted which accounts for its costing less." [22] They alleged connivance in the selection of ornamental lighting standards and claimed that the contract price was so greatly in excess of the market price for the same article in other municipalities as to "inflict on property owners in the assessment district . . . the sum of $18,000 over and above the amount with which they would be legally chargeable for the proposed improvements."

It seems, however, that in this instance a shrewd interurban traction company drove a sharper bargain than the public improvement interests. The company ex-

[22] Case No. 237,185, Superior Court of Los Angeles County.

pected, it was asserted, to dispose of a seven-foot sand strip on either side of its right-of-way down the main street in exchange for most of the $50,000 which the city had received from the county authorities for highway construction. Next, according to the dissenting assessment payers, "Although the said Resolutions, Plans, and Specifications require that the poles are so required to be installed ostensibly only for lighting purposes, yet by agreement between the City Council and the Pacific Electric Railway Company, they shall be used both as trolley poles and as ornamental lighting poles." This, they contended, necessitated the installation of towering 34-foot structures costing $450.00 apiece, when poles 18 feet in height would have been adequate. The agreement also called for the installation of 58 "dummy" standards "whose use shall be devoted only for use as trolley poles for said Electric Railway, but not by the City of Hermosa Beach as lighting poles or for any other purpose." [23] A matter that irked the complainants still further was their understanding that in addition to these acts of charity an agreement had been made between the majority members of the council and the railway company whereby it "will be relieved from any portion of the assessment to cover the expense caused by the construction of the proposed improvement." [23]

The decision of the superior court, which not only held that the council had complied with the technicalities of the law but that municipalities had the right to pay for extra-height light poles to accommodate the trolley wires of railway companies, offered very little consolation to the people who would have to pay the bill, and was appealed.

Shortly after the suit was filed, a petition was circulated for the recall of the three majority councilmen on the ground that by unwarranted abuse of their power they

[23] Case No. 237,185, Superior Court of Los Angeles County.

had imposed an unnecessary burden on the property owners. The petition was certified as sufficient by the clerk early in December; but the three men were able, by dilatory tactics,[24] to delay the recall election until the general election of April 9, 1928. This left the mayor as the only object of attack since the terms of the other two expired.

As the campaign progressed additional charges of extravagance and mismanagement were hurled at the mayor and his crowd. The public was reminded of such matters as $13,500 paid for a useless incinerator, and of a five-year contract for the removal of garbage awarded to a nonresident Armenian when an indigenous American had bid $180 a month less. An "opposition" newspaper which appeared opportunely in January proved exceedingly useful in placing such charges before the public.[25] The main issue they epitomized thus:

"Holston's Allies—the People. Hagenbuch's Allies—the Interests."

The administration, backed by leading "boosters" and by the "official paper of Hermosa Beach," defended their "constructive, far-visioned policy" vigorously, and violently denounced Holston and the "small coterie of men who have during the past four years, used every means within their power to interfere with the development of the city." [26] They insinuated that the campaign against them was being financed by a disgruntled lighting standard company, and warned the electorate that support of the Holston party would "mean the undoing of years of patient effort to establish Hermosa Beach in the minds of Californians as a city where its citizens are of just a little higher calibre than they are elsewhere, where the beach is just a little better, and where a city is being

[24] *Above,* p. 106.
[25] *Hermosa Beach Progress,* especially for April 5, 1928.
[26] *Hermosa Beach Review,* April 5, 1928.

built that is just a little more desirable to live in than any other on the coast." [26]

The electorate decided, apparently, that such distinction was not worth the price, for Hagenbuch was recalled by a vote of 814 to 605, and three councilmen friendly to the Holston-Yost retrenchment policy placed in office.[27]

LYNWOOD.—The people of Lynwood recalled three trustees in 1926 by a four-to-one vote as a result of a controversy over public improvements. While the one-sided result seemed a conclusive justification of the recall, the victims were able to present a defense that sounded quite plausible. The accounts of leaders on both sides are given to indicate the difficulty in determining with any degree of finality the merits of such movements. It will be noted that the lighting standard company that "worked on" the council, in this case had greater success than the rival company that concentrated its attention on the property owners.

The distinguished local realtor who led the movement for the recall expounded his views somewhat as follows:

[27] In still another recall recently threatened in Hermosa Beach, this time against A. R. Holston, the newly chosen mayor, this invincible local statesman explained his professional attitude on the use of the recall in an interview reported in the anti-administration paper. The editor, with a former occasion in mind in which Holston had been able to evade a recall election (*above* p. 122), "asked the mayor what would be his attitude when and if the petitions are filed. He stated that on the former occasion there were errors in the petitions which enabled him to make a fight in the courts. 'I assume,' he said, 'that my opponents have by this time learned how to prepare such petitions, and in that case the matter will be fought out at the polls. If, however, the petitions are not legal, I will go into the courts to fight them.'

"Mayor Holston called attention to the fact that he has three chances to win, while his opponents have only one. He explains it this way: 'If I am defeated, a recall petition against Councilman Yost will be put through and I shall run against him; and in case of failure to be elected, in a short time Councilman Kelterer will have served six months and be subject to the action of the recall statutes, and the same procedure will be taken in his case, with myself as a candidate against him. So, you see, a recall election at this time will by no means end the fight.' " (*Hermosa Beach Review*, June 7, 1928.)

"Lynwood, as a growing city, found it necessary to put in a great many improvements. Consequently the commercial companies found it good business to add a liberal percentage to their bids for the reward of those who gave them the business. Despite the fact that taxes and assessments were already high and the city had installed an overhead lighting system the previous year, the recently elected board decided to install a new system of lighting. The board selected the very exclusive Cement Standards for the new electrolier system. When the property owners and business men protested, the board stated that if a petition of protest was presented bearing the signatures of fifty-one per cent. of the property owners, they would reconsider. The petition was obtained—presented —and disregarded." Although he would not go so far as definitely to accuse anyone, he believed, and the people believed, that several of the board had had the opportunity of obtaining a little extra cash—and none of them hurt themselves running away from it.

"Another serious grievance," he declared, "was that this board put on extra traffic officers and under its orders these officers arrested everyone that came inside the city limits. The revenue was greatly increased from this source; but it hurt business very much and was so apparently unfair that even the Automobile Club of Southern California advised transients to avoid Lynwood on their way to the beaches.

"When recall petitions were circulated the board hired, with the city's money, an attorney whose business was all in recalls. For over a year recall proceedings were held up while the case was carried through all the courts of the state. Finally the business men united and hired an attorney and eventually succeeded in forcing the election. Recalls are very bad for business, but necessary in extreme cases."

A rival realtor, prominent in the fight against the re-

call, gave a somewhat conflicting version: "The Ku Klux Klan at that time was very powerful and all the members of the board were on the opposing side. An administration traffic officer joined the K. K. K. and immediately began betraying the fellows who had given him his job. When the administration crowd found this out they watched him and discovered that he was accepting bribes from people he pinched on the highway. Consequently, they fired him. It was then that his friends in the Klan started all the trouble, and as they were organized they succeeded. That was all there was to it."

When it was suggested that lighting had something to do with the recall he declared that that was entirely incidental. "However, it was this way. The board felt that a new lighting system was necessary and so entered into a contract with the Cement Standard Company. When a few people protested they were told that if they would present a majority petition, the board would do anything they wished—give them cement, metal, or none at all; but the petitioners must be residents of Lynwood. It was found that only twenty-eight per cent. of the signers were residents of the city. Hence it was declared invalid, for the council was not going to be run by people in Palestine and Hong Kong. There was never any objection to the installation of a new lighting system—the Ku Klux Klan wanted metal standards"—and although he did not like to accuse anyone, he believed that "the Metal Standard Company had offered an opportunity to some radicals to make a little money—and no one had hurt himself running away."

Watts and the Patented Paving Interests.—The people of Watts, in spite of their fantastic adventures with the recall, used it effectively to curb the local political activities of the patented paving interests. When the crusade against these marauders began, the local prop-

erty owners claimed they were paying tribute in the form of paving costs materially higher than in adjoining towns; that councilmen were receiving one cent a foot commission for contracts let to a certain paving concern; and that paving companies were prominent contributors to both regular and recall election campaigns. After two recalls and a general election, the city council, in September, 1924, passed an ordinance by a vote of three to two, which provided that no further royalties or bonuses be paid by the city of Watts to owners or promoters of patented pavement.[28]

The outstanding episodes in the movement to debar the political control of patented paving indicate that the taxpayers, under leadership with an understanding of the situation, can use the recall to advantage in the safeguarding of their interests.

In 1923, for instance, a large paving contract was "put over" in the following manner:

> On the evening of May 28 (1923) an agent of the National Paving Company circulated on Compton Avenue a petition calling for a one and one-half inch wearing surface over a base of concrete cement.
>
> About twenty signatures were obtained, some of whom own no property on Compton Avenue.
>
> On the NEXT NIGHT, May 29, the petition was presented to the Board of Trustees, and without even a pretense of trying to learn the wishes of property owners, the Board ordered the necessary proceedings.
>
> The National Pavement Company, with previous knowledge of what action the Board would take, had at the meeting specifications for the work previously prepared which gave paving company's interests right of way.
>
> There was also on the table a Resolution of Intention drawn by the paving company's lawyer, and which of course went as far as was legally possible in favoring the paving company.

[28] Minutes of the Board of Trustees of Watts, September 2, 1924.

All of these documents were then hastily passed by the Trustees without ANY consideration or changes.[29]

A protest was circulated which "not more than three property owners on the entire street refused to sign." Four of the five trustees voted to ignore the petition, and the transaction was concluded.

So apparent, through this and other incidents, was the misdirected allegiance of the four councilmen that they were recalled in a special election of November, 1923, and National Paving withdrew temporarily from the city.

Next Warrenite came to Watts and pitched its tent. Representatives of this patented paving product took certain members of the renovated council on a tour, and brought them back confirmed Warrenite enthusiasts. So mightily had the mayor been impressed that he kept a block of Warrenite on display in his barber shop. For five months no other patented pavement was specified for installation in the streets of Watts.

The Warrenite interests found themselves somewhat embarrassed, however, by the competition of the Willite people. Both placed solicitors on certain avenues with resulting conflict of petitions and confusion to the property owners. So the board called a meeting of the owners and settled the controversy by advising and securing the adoption of Warrenite.

Another councilmanic housecleaning had become necessary, and this was effected in April, 1924, at the general election, with the securing of another three-to-two majority against patented paving. It was then discovered that the proceedings for paving one important avenue had failed to comply with the law, and new proceedings were started for a non-patented paving. After bids of 45 and 46 cents a foot had been rejected as too high by a three-to-two vote the contract was finally let for 34 cents. The

[29] *Watts Herald*, July 16, 1923.

result was the installation of five inches of concrete base with three inches of asphalt top at a saving of $40,000 over the cost of five inches of the patented product for which the contract had originally been made.[80]

RECALL CAMPAIGNS

Enough has been said of the nature and causes of recall movements to indicate that they are far from being conventional affairs. Instead of coming, like general elections, as the inevitable and routine result of a certain astronomical process, they flare up suddenly as the outcome of some pressing irritation or incentive for political action. Their occurrence depends upon the existence or creation of issues sufficiently real and provocative to arouse the interest and the feelings of an ordinarily lethargic electorate. A recall campaign, under such circumstances, can be expected to display both a spontaneity and a technique that distinguish it from ordinary political operations.

This special technique appears first in the circulation of recall petitions. The petition is usually started under the impetus of a stirring mass meeting, a special edition of a newspaper, or other inspiring stimulus; but to secure the signatures of twenty-five per cent. of the active voters, with an additional fifteen per cent. as a margin of safety against invalid names, requires skillful salesmanship. The ease with which signatures can be secured to petitions has been somewhat exaggerated, and the secret of success is the obtaining of effective circulators. Paid workers, rather than volunteers, are commonly used, even when but a few hundred signatures are required; and at the standard compensation of ten cents a name there is always an abundance of applicants. Battle-scarred war veterans are much in demand because of their appeal to popular sympathy, and indigent but deserving widows

[80] *Watts Herald*, July 29, 1924.

with large families are equally efficient. The plea that a signature means a dime wins the philanthropic heart of many a citizen normally opposed to the recall. Compensation is not always in cash. Quite often it is the promise of a city job in the event that the recall is successful. This incentive, held out to persons whom the fortunes of politics have retired temporarily from the official pay roll, often produces better results than the plan of paying commissions.

Some people sign recall petitions because their study of the situation has led them to believe that the removal of the impugned officials is politically wise; but more do so from less rational motives. Such suggestions by a wily solicitor as, "Sign this and get your taxes reduced," or "put the rascals out," catch many an unwary voter in an unguarded moment. Some sign as the easiest means of getting rid of a troublesome canvasser, and still others because it gratifies their naïve self-esteem to exercise this prerogative of citizenship. The circulators are frequently guilty of ignorant or willful misrepresentation in violation of the strict laws of the state, but are rarely brought to justice.[81] As a rule, however, a petition that is easily and rapidly secured and contains a low percentage of invalid signatures, indicates the existence of a real grievance rather than mere political trickery.

A recall election campaign exhibits all the traits and tactics that characterize an ordinary election, but with certain added or exaggerated features. The factional alignment of interests, the shrewd political manipulators, and the crowd with its gregarious inertia are ever-present factors; but the unusual circumstances of an emergency

[81] The entire board of trustees of East San Diego was voted out of office in 1923, but refused to canvass the election returns on the ground that the petition was fraudulent. It was found that many names had been signed by children for their parents. One woman confessed to fraudulently securing and signing names and was put on a year's probation. For the law governing such matters see pp. 76-77.

referendum on the question of summarily dismissing a public official charged with betraying his trust arouses a tension and an excitement developed in regular elections only when vital issues are at stake.

The assailed official himself contributes to this tensity of feeling, for there is nothing further removed from his desires than to be thrown out of office in disgrace. No matter whether he holds office from public spirit or the lust of domination, no matter whether he is honest and efficient, or stupid and corrupt, the threat of recall is most humiliating to his pride. He regards the movement as fostered through political spite, assumes a vindictive attitude toward its sponsors, and wages his campaign accordingly. His state of mind is reflected not only in the violence and highly personal nature of his campaign propaganda, but in the formal defense he is permitted to make on the sample and election ballots. This is illustrated by such statements as, "No person wants to be disgraced or humiliated by his fellow townsmen by being recalled from an office of public trust," and, "After a residence of over thirty years, I cannot believe my townsmen will humiliate me." [32]

All the bitterness and resentment of the attacked official communicates itself to his friends and associates and the excitement spreads in the community. If back of personal sympathy there is personal interest, as is usually the case, a formidable line of defense develops. The newspaper that stands to lose a printing contract, the contracting firm or paving company that faces the loss of a dependable ally, and the officeholders threatened with removal from the pay roll have grounds for feeling as vindictive as the official himself.

The agitators for the recall, since they bear the burden of the offensive campaign, must convince the public

[32] From the defense of two trustees which appeared on the ballot in a recall election in National City, September 7, 1916.

not only by demonstrating the validity of their charges, but by outrivaling the defense in the bandying of personalities and the disseminating of scandal. If, for instance, they brand the incumbent as a "cockroach," and he hurls back the insinuation that they are a "set of pusillanimous nincompoops," their publicity man must lie awake nights to think of an epithet still more appealing to the popular ear. Their friends and associates, especially those who hope to be the beneficiaries of a change in administration, contribute enthusiastically to the clamor.

Under the stimulating influence of such leadership, the general public furnishes another distinctive feature of recall campaigns by throwing off its *blasé* disregard for politics and rising up *en masse* to take sides in the contest. Once aroused, the citizenry hurls itself into the fight with abandon. Neighbors sever diplomatic relations, acquaintances cease to be on speaking terms, respectable citizens engage in brawls, churches and other organizations become violently partisan, and even the clergy preaches such sermons as "What Would Christ Do If He Came to Covina," the inference in this case being that He would recall the mayor.[33] The professional manipulators not only sense the importance of social conformity, economic interest, and moral convictions as factors in determining individual political affiliation, but they take advantage of the fact that under such conditions the heightened suggestibility of the crowd inclines it to emotional and hasty action.

There is one class of citizens that is always very skeptical of the recall and usually takes to the tall timber when one is threatened,—the small merchant or tradesman. Just when he has learned from his favorite service

[33] Covina recall campaign of 1926. For other illustrations of the reactions of the public see the Anaheim recall, 1923, pp. 137-139, and the Banning recall, 1925, pp. 132-134.

club the art of back-scratching brotherly love, along comes a recall campaign demanding that he assume a partisan position in a violent political altercation. No matter which cause he espouses he loses customers which favor the other side, and if he tries to remain neutral he incurs the ill-will of both factions. That the recall hurts business, is the cry of the small merchant in many of the towns where the recall has been used. It is an argument that is always vigorously advanced by the faction which is being recalled, but as consistently overlooked when the same crowd happens to be promoting a recall. There is no question that normal relations are disturbed in a turbulent political campaign with actual issues at stake; but the unenviable position of the small-town business man is partially a result of his exaggerated fears and of his inability to keep his head.

A recall campaign in a small city not only seems to bring out bitter personalities and a mob spirit to a degree not ordinarily evident in general elections, but there is a tendency for the bad feeling engendered to continue in the community after the issue itself has been settled. It is asserted that local harmony is sometimes destroyed for months or even years. Certainly the story of a recall campaign becomes a colorful part of the traditions of a town even when the history of conventional political events is forgotten. It is hardly to be expected that when personal animosity is aroused to fever heat in a hotly contested recall, it is going to subside the day following the election; but for a community to continue in such abnormal disunion is a serious reflection on the political intelligence of the body politic.

The nature of campaign propaganda and the methods of conducting recall campaigns can be much better illustrated than explained. The publicity in the successful campaign to recall Trustee Beck of Azusa is a case in point. The formal grounds for the recall consisted ex-

clusively of the four-word charge, "general incompetency and inefficiency." Beck, in his reply, was more accommodating, and declared at some length that he had always had the taxpayers' interest at heart; that he had worked for the benefit of the majority and not the few; that he had censured only such city employees as had shown gross neglect of duty; and had guarded city property as though it were his own. While neither declaration threw much light on the real intent and purpose of the recall, it was motivated, apparently, by petty spite and involved no political issue of great moment.

What the campaign lacked in major issues, however, it made up in a spirited exchange of billingsgate which reached an exceptionally high standard of unpolished but picturesque expressiveness. Beck assumed the offensive in a single-handed campaign which he carried on largely through newspaper advertising. His opening volley was in the nature of such figurative allusions as: "Do you wonder that 'The Old Ring' seeks my scalp—wants to throw me out of their 'Old Swimmin' Hole' "; and "Do you know that if they get *me*, that they are ready to proceed *to scalp one more member* of the present council and sail on and on in their own sweet way?"

The opposition retaliated with the charge that Beck had used his position as chairman of the police committee to "fix the tickets" of patrons of his filling station arrested for violation of the traffic laws, and to shield the chief of the detective bureau of a nearby metropolis who had been arrested within the city limits of Azusa "for driving in an intoxicated condition."

Beck returned with a provocative portrayal of certain personal characteristics of the opposition leaders:

> The men behind the Recall—are they capable men? Have they ever proven themselves as such? Has any branch of society been able to accept them as an asset to their upbuilding, uplifting qualities? No! Always a tearing down, destruc-

tive force. Why don't they publicly give their names? *Shame!*

Viciousness, relentless, the "Goal of Personal Greed" is the policy of this element. I have charity for one and all excepting such political lepers; the leaches, parasites of the legitimate taxpayer! To destroy them is my object! *Legitimate business must survive!* Legitimate men and women only create legitimate livelihood.[84]

He also had the temerity to question the war record of a veteran who had been active in the circulation of petitions. This was a telling blow that placed the recall instigators on the defensive, and necessitated the hasty circulation of the following convincing denial of Beck's allegations:

Owing to the fact that Beck found it necessary to cast aspersions concerning the war record of Mr. Morden, Mr. Morden will have on display an honorable discharge from the United States Army, together with photographs showing wounds received while in the service. Photo on display at Ford garage.

The recall faction had no intention of being outdone in the play of repartee and exhausted a colorful vocabulary in a final effort to express their estimate of Beck's character. The handbills that conveyed these sentiments fairly smoked with such lurid insinuations as the following:

Is it not a fact that Mr. Beck attended church only once in Azusa? during his many years of residence here? And was it not the time that he went after the Presbyterian Minister with a gun? on account of a purported remark?

Is it not a fact that Mr. Beck can and does consume as much BOOTLEG WHISKEY as any two men in Azusa? And that the police have seriously considered the raiding of his Service Station? And is it not a fact that Beck is notorious for drinking the other fellow's liquor?

Does not the statement made concerning the War record of Mr. Morden appeal to you as being very un-American? Mr. Morden can and will show his Service Record upon anyone's

[84] *Azusa Record*, June 23, 1927.

request. It is a known fact that Mr. Morden carries the severest War Wound of anyone in Azusa.

Friends and voters remove this cancerous tumor that hangs on us like a barnacle, this bolshevist, this anarchist element, who through his Machiavellian antics has brought the fair name of Azusa into disrepute. Remove a political leach and vote for Roy E. Martin.

This is a reply to Mr. Beck's latest satanic epistle.

RECALL COMMITTEE.[35]

The campaign to recall four councilmen of Monterey Park in 1927-28 illustrates still further the organization, methods and persuasive propaganda used in a typical recall movement. The leaders in the action declared that the reasons for the recall could be traced to the election of 1926 when three of the incumbents came into office. They asserted that the election had been an unfortunate political accident because of the failure of the voters to take their candidacy seriously enough to go to the polls and vote against them. It had been the intention of the "better element" of the community to make the best of it until the next general election; but conditions had become intolerable—hence the recall.

The four trustees had a quite different explanation. Back of the recall were "Discharged city employees, disappointed office-seekers, disgruntled malcontents, and ne'er-do-wells." [36] They had been embarrassed by the failure of the people to know their own minds on the subject of street improvements. The recall leaders, furthermore, were opposed to progress; and "Without the shadow of a legitimate excuse they are asking the voters of Monterey Park to dismiss in virtual disgrace public officials who have served conscientiously and at great personal sacrifice."

[35] These quotations are taken from campaign literature.
[36] *Monterey Park Progress*, January 16, 1928.

The campaign itself left little undeveloped in the way of tactics and issues. The stage settings were perfect. Each faction had a camouflage organization through which it worked; the pro-recallers, the Monterey Park Civic League and the anti-recallers, the Greater Monterey Park Association. Each faction, moreover, controlled a newspaper. The trustees had the hearty support of the paper which handled the city's official printing. The recall group gained a hearing through the rival "gutter rag," as the opposition called it. And by no means least, each faction had an official headquarters on the city's principal thoroughfare, equipped with a high-powered publicity manager who could burn up the enemy with red-hot rhetoric at the same time that he warmed the hearts of his employers.

Such rich metaphors and pungent epigrams as the following illustrate the literary possibilities of recall publicity:

> They (the promoters of the recall) are all too aware that every so-called charge like they have so far made against the Mayor and the Councilmen has but vindicated the integrity of these officials. But like a drowning man grasping at a straw, they now pin their cause on a flood of pernicious vilifications and unmitigated falsehoods released as the dying gasp of a sinking movement. *Save our town from the wreckers. Vote No.*[87]
>
> *Don't be a 'Yes' man. Vote No.*
>
> And (from the instigators of the movement), gentlemen, do you dare ask the voters "to investigate thoroughly the records of your city government during the period of your incumbency?" Why, bless your souls, that is why you are being recalled, the investigation was made.
>
> And, gentlemen, it is not swapping horses in the middle of the stream. It is throwing life preservers to the taxpayers when the Ship of State is sinking.

[87] *Monterey Park Progress*, January 16, 1928.

About the only defense left to the present council is insanity.[38]

Even the urge to burst into verse is given an opportunity for free expression as the following excerpts show. The disastrous effect of the recall on the city is developed delicately in a bit of dialect verse of which the following are the opening stanzas: [39]

If de money what's been spent for dis 'njunction and dis recal had be give to de united charties, what ah nice Christmas hit would have give to some little chilun.

Dis recal lawyer might got de tax payers trouble at heart, but he sho some collector his self, pass de hat de baby needs new shoes.

Business rotten, gwine git rottener, if de people don't stop dis faction fight, vote de recal down, and stop dis mud throwing fo de good of de town, vote no on de 17th.

A foible of one of the councilmen whose removal was sought was portrayed in the following picturesque fashion: [40]

I heard him coming
Down the sidewalk
Staggering,
And falling around
And shouting
At the top of his voice
"Bring on your *Recall,*
Bring on your voters,
I'll bet you
Five hundred bucks
You can't recall me——
Bring on your 'lection
and see if I care—hic."

The varied assortment of issues that rapidly accumulated left little to the imagination and furnished each side

[38] *Monterey Park Tribune,* January 17, 1928.
[39] *Monterey Park Progress,* January 6, 1928.
[40] *Monterey Park Tribune,* January 13, 1928.

with plenty to talk about. To the original squabble over improvements were added imputations of dishonesty, charges of fostering bootlegging, a Catholic-Protestant controversy, and the alleged machinations of an out-of-town recall attorney, a paving company, and an ornamental lighting company.

The rival newspapers became the vociferous publicity organs of the warring factions for the duration of the campaign; and what they felt it incumbent to leave unprinted was readily broadcast through the usual channels for the dissemination of scandal. As the campaign progressed the charges and countercharges became more and more uncomplimentary, until they included accusations of every known political deficiency.

The impugned councilmen based their campaign for continuance in office on the record of their achievements, on the insincerity and malice of the opposition, and on the plea that the use of the recall was always detrimental to a community. The attack upon them, they insisted, was "a campaign of hate" by "the party of stagnation." [41]

The pro-recall group followed the tactics of supporting its general charges of inefficiency, extravagance, and disregard of the wishes of the taxpayers by the citing of specific instances, by belittling the councilmen's claims of constructive accomplishment, and by suggesting a corrupt connivance with certain paving and street lighting interests. Since this led into dangerous territory, unless absolute proof could be presented, they resorted to the use of adroit questioning and ironical suggestion to convey their charges to the voters.

Did you use the same method in checking the petition that the Du-Rite (patented paving) salesman submitted as you did in checking the protest petition in that district?

If a square foot of Du-Rite three (3) inches thick costs $.129, and a square foot of concrete three (3) inches thick

[41] *Monterey Park Progress*, January 6, 1928.

costs $.105, would you railroad in Du-Rite as you did in the southeast section? [42]

The charge that the recall principle was vicious was well met. "We can well agree," declared the Civic League in its publicity, "that the Recall Law *can* be used for these purposes (furthering the personal ambitions of disgruntled office-seekers, etc.), but at the same time, it is *the only weapon* that the people have at their command to *oust* officials who are *not* doing their duty." [43] And why, they wanted to know, if the recall were such a disgraceful thing, were they using such circus methods of publicity as the huge *"Kill the Recall"* banners strung across the main street, which carried the bad news to all passing tourists.

Each side brought its campaign to a seething climax on the eve of the special election; but the efforts of the element favoring the recall carried more weight and the four councilmen were recalled by a decisive vote of approximately two to one.

Recall Elections.—Recall elections possess several features that distinguish them from the ordinary variety; but the most significant characteristic is the amazingly large percentage of the registered voters who participate. The civic slacker is decidedly in the minority on such occasions. The average vote cast in all the elections for which accurate results have been obtainable is seventy per cent. of the total registration; in several cities, notably Turlock in 1914, and Modesto in 1921, the percentage was eighty-five; and in Anaheim, with a population of 10,000, ninety-three per cent. of the registered vote turned out for the recall election of 1923.

One of the strongest indications of the democratic virtues of the recall is that, in this day of increasing apathy to civic obligations, overwhelming majorities of the elec-

[42] *Monterey Park Tribune*, January 17, 1928.
[43] *Ibid.*, January 13, 1928.

torate turn out spontaneously for recall elections. Under such circumstances there is no need for the idiotic appeals of chambers of commerce to "vote as you please but vote"; but people go to the polls because of a real interest, because of the vitality of the issues, because they have been informed and stirred. The amount of their participation is determined by the intensity of feeling aroused and the seriousness of the issues at stake. There may be some question as to the degree of intelligence with which they function, but that is a problem of a different order.

Another feature that is peculiar to recall elections is, of course, the type of ballot used. The form employed in the small cities of California, with the exception of the few which have freeholders' charters, is that designated by the general law of the state, which has already been described.[44] It contains arguments for and against the recall and makes provision for voting on two questions,—the retention or removal of the incumbent, and the choice of a successor to fill the possible vacancy.

While the promoters of a recall are required to state in the petition the reasons for their action, the officer whose removal they seek has no official opportunity to make a formal reply until the issuance of the sample ballot. This may be said to place him somewhat at a disadvantage with respect to his opponents; but it is minimized by the fact that the statement in the petition is commonly treated as an inessential formality. The 200-word statement which the incumbent is entitled to make on the sample ballot, while hardly adequate to justify his course in office, is frequently more specific and explanatory than the statement of charges against him; and a comparison of the two is very likely to throw valuable light on the fundamental issues and motives in the movement.

The double ballot which is commonly used places the

[44] *Above*, pp. 74-75.

incumbent under the handicap of not merely running against his own record, but also against the candidates for the possible vacancy. The alignment of forces against him, by virtue of this arrangement, is made up not only of those who oppose his course in office but also of the friends and backers of the succession candidates.[45] This handicap is rendered somewhat less serious than it may appear through frequent inability to secure as candidates, persons who inspire confidence in the electorate. The fact that the election is only for the remainder of the unexpired term combines with the stigma attached to recalls to make candidates of high calibre more difficult to secure than for regular elections.

It is frequently pointed out as a defect in the law of the recall that the successor of a recalled official may be chosen by a smaller vote than that cast for the latter's retention in office. Such a result is quite possible when there are three or more candidates for one office, as indicated by the following example:

HERMOSA BEACH RECALL, APRIL 9, 1928

For recall of Hagenbuch	814	To fill vacancy—J. W. Clark ..	353
Against recall of Hagenbuch ..	604	J. Gilbert ...	277
		Mrs. Moses ..	224

This has not occurred so frequently as to be of major importance, and can easily be corrected without any fundamental change in the provisions of the law.

GENERAL CONCLUSIONS

From the foregoing study it is possible to make certain significant generalizations as to the use of the recall in small cities.

[45] As has been pointed out in the analysis of the law of the recall in cities with freeholders' charters, this problem has been recognized by the requirement, in a few instances, of separate elections, and in several cases in recent years, by the provision for filling the vacancy by appointment.

I. It should be pointed out, in the first place, that the recall, in spite of the comparative ease with which it can be employed in small cities, has been used by them so sparingly as to justify the predictions of its original sponsors that it would be chiefly useful for its cautionary effect. While the experience of a few towns has shown that the recall may be used to excess, this has been decidedly the exception; and had it not been for the unsettled conditions resulting from the abnormal population growth of recent years, especially in Southern California, its general use would have been perceptibly less. It is impossible to give an accurate estimate of the effectiveness of the recall as a deterrent to official misdeeds; but it has been used with sufficient frequency to serve as a stern reminder to public officials of their responsibility to their constituencies. While it has, on occasion, been employed as a means of intimidation, there is no evidence that it has in this way seriously handicapped constructive public service, or discouraged the candidacy of men of high calibre for public office.

II. In the second place, it is impossible to evaluate with precision the results of the actual use of the recall. In a few instances officials have been removed from office with distinct benefit to the community; in a few cases injustice has been done by the malicious recall of fearless and capable public officers; on more occasions factional political differences have been the chief influence behind the movement. The grounds on which the recall has been used have been limited in variety. The people have not undertaken to usurp the function of the courts by recalling officials for corrupt practices; but on a few occasions, when there has not been sufficient evidence to convict or the courts have failed to give redress, the recall has been efficacious in removing officials of dubious integrity. Malfeasance or misfeasance in office and the questionable personal morality of the official have been

fundamental grounds for removal in only a few instances. The recall has been employed with equal effectiveness, in a limited number of cases, by the proponents of both an "open" and a "closed" town. On a few occasions in recent years it has been used as a weapon to defeat the political control of the Ku Klux Klan, and the Klan has also found it an occasional aid in its maneuverings. Despite the specific charge on many recall petitions of "general incompetency and inefficiency," the public has been necessarily charitable on this score, and more definite complaints have always loomed up as the real reasons for the movement.

The most significant and general application of the recall has been in the removal of officials who have been unrepresentative or arbitrary in their handling of public policy, or who have taken official action without ascertaining the wishes of the community. This has been especially true in controversies over questions of finance and public improvements in which the pocketbooks of the property owners have been directly involved. Even though the public does not always act intelligently or farsightedly, its action against unrepresentative officials would seem to constitute a reasonably satisfactory and proper use of the recall, especially in view of the fact that small California cities have both the short ballot and long term of office. In helping to maintain confidence and responsiveness under such conditions the recall serves an unquestionably useful purpose.

III. The recall, in the third place, is subject to most of the abuses and shortcomings that characterize ordinary elections, with certain others in addition. Since people react to the stimuli of any political campaign like human beings, and not like political demi-gods, they are even more susceptible to the hocus-pocus of political manipulators in the stress of recall elections; and fleeting shadows of popular opinion are likely to play too large a part in

the making of decisions. Even if the citizen is intelligent and self-possessed he labors under the disadvantage of being merely a member of the audience instead of one of the slight-of-hand artists on the stage. He is not sufficiently informed of the forces back of government to act with unerring judgment in determining the merits of political controversies, and in many cases he has not learned to look for these concealed but dominating influences. This condition is not chargeable against the recall, however, but against the limitations of human nature and of political training.

IV. A fourth conclusion is that some room exists for improvement both in the provisions of the law and in the way in which it is used. This is indicated not only by the criticisms of experienced observers, but by the abnormal amount of litigation which has accompanied the use of the recall. Most of this litigation has resulted from the obstructive tactics of officials or the carelessness of the promoters of recalls, and can be partially eliminated by more careful supervision and by minor changes in the provisions of the law itself. Since this subject is taken up in detail in a later chapter, no discussion is presented here.[48]

V. A fifth significant point, which has already been emphasized in the discussion of recall elections, is that such events arouse more general interest and active participation on the part of the voters than any other type of election. This is one of the most salient aspects of the operation of the recall because it indicates the vitality of the device and shows that the public has not lost its interest in political institutions when real issues are involved.

VI. Finally, the recall in small towns, in spite of its continued use and the absence of sentiment for its abandonment, is still an unassimilated institution. The

[48] *Below*, Chapters IX and X.

public employs it although it is irritated by its operation. It is retained more because people approve of its democratic principle and because of the feeling of security it affords, than because it has always been used with wisdom and discretion. The idea of elections resulting from lack of confidence in public officers, while a normal feature of European political institutions, is so unique in American political practice that it will take time for it to be fully accepted and understood.

CHAPTER VI

THE RECALL IN CITIES OF 20,000-100,000 POPULATION

The two preceding chapters have presented a study of the operation of the recall in the 245 small cities of California. There are in the state twenty-five cities of more than 20,000 population whose experience with the recall remains to be considered. Their size, their forms of government, and the varying nature of their provisions for the recall all suggest the desirability of giving special attention to their adventures with this democratic weapon. Twenty-two of these cities, their populations ranging from 20,000 to 100,000,[1] have been grouped together for comparison in this chapter. The remaining three, Los Angeles, San Francisco, and Oakland, occupy a position of such special importance in the state that their unique experiments with the recall are given more detailed consideration in the succeeding chapter.

The larger populations of this group of twenty-two cities make their employment of the recall a much more significant and difficult undertaking than in the average small town. Instead of a few hundred signatures, several thousand names may be necessary for a sufficient petition, and a campaign must be carried on that will arouse a large electorate inclined to be less interested in local political affairs than the voters of a small city. These conditions necessitate, for a successful recall movement, careful promotion and organization, ample financial support, and abundant means of publicity. Conditions are

[1] Population figures as near to the date of recall as possible are used.

comparable to those in the smaller communities only when a ward system, such as exists in Bakersfield or San Bernardino, makes possible the independent action of small councilmanic constituencies.

The lack of uniformity in the type of government under which this group of cities functions suggests the need of caution in making comparisons. Instead of operating under a uniform legislative charter. like most of the small cities, all but Huntington Park [2] are governed by home-rule charters. A few still follow the mayor-council plan with the ward system of councilmanic representation; the rest are divided between the commission and commission-manager forms of government. The number of elective officers varies; members of boards of education are generally subject to recall; and in the city of Long Beach the recall applies to the city manager as well as to elective officers.

Not only do the number and status of officials subject to recall vary from city to city, but there is no general law governing this method of removal from office in this group of cities. As has been discussed in a previous chapter,[3] each one of these cities has a special recall provision in its own charter. While this arrangement has led to some legal confusion and has produced a few provisions for the recall that are so defective or so formidable as to be practically unworkable, it has made possible local experimentation with the device before its adoption as a general law of the state, has provided desirable flexibility in fitting the recall to the needs of cities of varying size, and has promoted study of the means of perfecting the law.

Notwithstanding the fact that the difficulty in using the recall is somewhat in proportion to the size of the

[2] Huntington Park still operates under a general charter designated for cities of the sixth class.

[3] Chapter III, "The Law of the Recall."

population, it has been more generally employed by this group of larger cities than by the small municipalities. Recall movements have progressed as far as the filing of petitions in fourteen of the twenty-two cities,[4] whereas but one-fourth of the smaller cities have ever taken such action. This is accounted for in part at least by their greater familiarity with the principle of the recall through the individual consideration and adoption of the scheme by most of them before it became a state-wide institution.

The recall cannot be said to have been overused by this group, however, because since 1906, when its use was first attempted in San Diego, they have employed it on but thirty-one occasions. In this respect, at least, it has borne out the expectations of its originators. No city has sought to outrival Watts or Seal Beach by attempting to monopolize its use. Five cities have employed it but once, four twice, Long Beach and San Bernardino each three times, and Bakersfield, Riverside and San Diego each four times.

Not only has the use of the recall been well distributed among these medium-sized cities of the state, but there has been an even distribution of its use according to time. Although many of these cities have been suffering in recent years from violent growing pains, this ailment has not resulted in increased recourse to the recall, and not until 1928 has the number exceeded two a year. As shown by the accompanying table, the recall was employed by cities of this group seven times before its incorporation in the constitution of the state in 1911; and, contrary to what might have been expected, no excessive experimentation resulted from this state-wide sanctioning and pop-

[4] This information was secured from the city clerks of the twenty-two cities, all of whom responded promptly and courteously to a general questionnaire. The following cities reported no recalls: Alameda, Alhambra, Glendale, Pomona, Sacramento, San Jose, Santa Ana, Whittier.

ularizing of the principle. It has been suggested that the "progressive movement" had already temporarily removed the rascals.

1906–1907	2—San Diego (2)	1918	0
1907	1—San Bernardino	1919	2—San Diego, Bakersfield
1908	1—Santa Monica	1920	2—Pasadena, Bakersfield
1909	1—Long Beach	1921	2—Long Beach, Bakersfield
1910	1—Richmond	1922	1—Long Beach
1911	1—Riverside	1923	0
1912	2—Berkeley, San Diego	1924	2—Richmond, Santa Barbara
1913	0	1925	1—Berkeley
1914	1—Vallejo	1926	2—Fresno, Santa Monica
1915	0	1927	2—Huntington Park, San Bernardino
1916	1—San Bernardino	1928	6—Bakersfield, Huntington Park, Riverside (3), Stockton
1917	0		

Of the total of thirty-one recall petitions filed, twenty-two have resulted in elections. Three proved insufficient and were never supplemented, and six culminated in litigation. In nine instances the officials were removed from office, in twelve cases they were sustained, and in the Stockton recall the result was divided, indicating a slightly more conservative tendency than in the small cities, where fifty per cent. of all recall elections have resulted in the removal of the incumbents.

The small number of officials who have actually been recalled bears additional testimony to the conservatism with which the scheme has been employed by this group of cities. Of the fifty-eight officials against whom petitions have been filed, forty-four have had to face a decision of the electorate, and but fourteen have been removed from office. So while the chance of being recalled from office is somewhat greater than that of being struck by lightning, it is a very remote contingency in the career of the average public official. The voters have diversified the direction of their displeasure, moreover, by recalling seven councilmen or commissioners, three mayors or presidents of commissions, three members of a board of education, and one city manager.

SUMMARY OF RECALL MOVEMENTS IN CITIES OF 20,000-100,000 POPULATION

Number of cities in 20,000-100,000 group	22	*Number of Officials Involved*
Number of cities in which recall petitions filed	14	
Number of times recall petitions filed	31	58
Number of times recall petitions held insufficient	3	3
Number of times elections averted by litigation	6	11
Number of times elections held	22	44
Number of times recalls successful	9*	14
Number of times recalls failed	12*	30

* The results of one election were divided, five councilmen being sustained and two being removed.

RECALL MOVEMENTS THAT FALL SHORT OF ELECTION

It is not necessary for a recall movement to come to an election to make it an arresting phenomenon of municipal politics. Threats of recall can be more lightly cast aside than in small towns because of the greater difficulty in getting the machinery to function; but not infrequently a movement sponsored by some well organized minority group gets under way and effects a change in the political situation without progressing beyond the circulation of petitions.

Elections Averted by Litigation.—The courts have proved so dependable a haven of refuge for several officials whose recall has been sought, that some authorities have been led to declare that any public official, by retaining the services of a clever attorney, can almost completely immunize himself from the process. At least ten of the thirty-one recall movements under consideration have been involved in litigation. In five instances elections have been averted, and in one case an official

RECALL MOVEMENTS IN CALIFORNIA CITIES OF 20,000–100,000 POPULATION

City	*Population*	*Date*	*Officials*	*Petition Insufficient*	*Litigation*	*Official Sustained*	*Official Removed*
Bakersfield	18,638 ('20)	1919	Councilman	.....	.....	#	.....
"		1920	Councilman	#	.....	.....	.....
"		1921	Councilman	.....	.....	.....	.....
"	28,961 (est.)	1928	Four Members Bd. of Educ.	.....	.....	.....	#
Berkeley	40,434 ('10)	1912	Two Members Bd. of Educ. One Councilman	.....	#	.....	.....
"	66,209 (est.)	1925	One Member Bd. of Educ.	.....	.....	#	.....
Huntington Park	38,000 (est.)	1927	One Trustee	.....	.....	#	.....
"		1928	Two Councilmen	.....	#	.....	.....
Fresno	85,000 (est.)	1926	Mayor	.....	#	.....	.....
Long Beach	17,809 ('10)	1909	Councilman	.....	.....	#	.....
" "	55,593 ('20)	1921	Councilman	.....	.....	.....	#
" "		1922	City Mgr.	.....	.....	#	.....
Pasadena	45,354 ('20)	1920	Two Commissioners	.....	.....	.....	#
Richmond	6,802 ('10)	1910-12	Six Councilmen	.....	.....	#	.....
"	22,530 (est.)	1924	Five Councilmen	.....	.....	#	.....
Riverside	15,212 ('10)	1911	One Councilman	.....	.....	#	.....
"	31,484 (est).	1928-29	Mayor	.....	.....	.....	#
"		1928-29	Two Councilmen	.....	.....	.....	#
"		1928-29	One Councilman	.....	.....	#	.....
San Bernardino	12,779 ('10)	1907	Two Councilmen	.....	.....	#	.....
" "		1916	Mayor	.....	.....	.....	#
" "	38,868 (est.)	1927	One Councilman	.....	.....	#	.....
San Diego	39,578 ('10)	1906-07	One Councilman	.....	#	.....	.....
" "		1907	One Councilman	.....	#	.....	.....
" "		1912	One Councilman	#	.....	.....	.....
" "	74,683 ('20)	1919	Three Members Bd. of Educ.	#	.....	.....	.....
Santa Barbara	25,000 (est.)	1924	One Councilman	.....	.....	.....	#
Santa Monica	7,847 ('10)	1908	One Councilman	.....	.....	#	.....
" "	30,000 (est.)	1926	Mayor	.....	.....	.....	#[1]
Stockton	49,800 (est.)	1928	Mayor and Six Councilmen	.....	.....	.....	#
Vallejo	21,107 ('20)	1914-15	Mayor and One Commissioner	.....	#	Five Councilmen	Mayor and Councilman

[1] Resigned when petition filed.

was enabled to stay in office after the people had voted for his removal.

The use of the courts to evade recall proceedings was introduced with the first two attempts to recall public officers in California. The first case, which grew out of the recall of a councilman in Los Angeles, was decided in favor of the official, but too late to restore him to his office.[5] The second case, arising from an attempted recall of a member of the San Diego city council, was decided in favor of the proponents of the recall, but too late to benefit them, as the councilman's term expired before the legal proceedings were completed. The San Diego case is interesting not merely because it illustrates how the element of time favors the assailed official, but because it raised a number of vital questions as to the validity of the law of the recall at a time when there was very little precedent for the judicial determination of such questions.

The Anti-Saloon League initiated this recall movement in 1906 against three "wet" councilmen because they had voted for and supported an ordinance regulating the licensing and sale of liquor to which the league was opposed; because they had voted to disregard petitions to submit this ordinance to a referendum vote of the people; and because they had voted to disregard former petitions for their own recall.[6]

Various recall petitions were filed, supplemented, and certified as sufficient by the city clerk during the early months of 1906;[7] but the council took no steps to call an election. Informed that the recall law was unconstitutional, this august body chose the higher duty of upholding the constitution. But when it refused to act on a petition to recall Councilman Reynolds, certified as

[5] See *below*, pp. 229-231, 314-316.
[6] *Los Angeles Examiner*, June 23, 1906.
[7] *Los Angeles Times*, January 24, 1906.

sufficient March 30, one of the 105 petitioners brought suit to compel the calling of an election. A writ of mandate was granted by the superior court,[8] but the case was appealed and the decision sustaining the action of the lower court was not given until March, 1907, after Reynolds' term of office had expired.[9]

San Bernardino.—Local conditions in San Bernardino in 1927 were propitious for recalls. Given a new mayor elected by only a slight majority over the previous incumbent; add a three-to-two councilmanic division with a vacillating tendency; add high taxes and a flood of special assessments; then let the mayor displease his professional backers by failing to follow the usual housecleaning policy as to city employees, and insult certain influential gentlemen by appointing a chief of police who is harsh in his dealings with bootleggers, and one has a situation with all the potentialities for a city-wide political imbroglio.

Although the mayor had popularized himself with the general public by forcibly ejecting from his office an annoying newspaper reporter, he was accused by the opposition of tampering with the administration of justice to escape the legal consequences of his act; and there were also suggestions of connivance and profiteering in the proposed purchase by the city of property for a sewer farm.

The "gang" decided that conditions were sufficiently auspicious to try a recall in the smallest ward. They succeeded in filing a petition containing 360 signatures, which was forty more than the thirty per cent. required by the local charter. The petition was certified by the clerk as sufficient; but in later court action sufficient names were

[8] *San Diegan Sun*, June 28, 1906.
[9] Good *v.* Common Council, 5 Cal. App. 265. See *below*, Chapter IX, "The Recall in the Courts."

ruled out, because dates had been improperly dittoed, to invalidate the petition.[10]

Vallejo.—The recall as used in Vallejo in 1914-15 illustrates how an official may be voted out of office and still continue to hold his position because of a legal technicality. A recall was started against Mayor Blake and Commissioner Warford and an election held April 23, 1914. The original Los Angeles type of recall election was followed, so that the two officials became candidates to succeed themselves in competition with two other candidates. Wilson, one of the latter, ran first in the election with a vote of 2,071, Warford ran second with 2,024, and Blake was third with 2,012. It appeared, therefore, that Blake had been ousted. But there had been a serious oversight in the nomination of candidates. While Blake had but one year, and Warford three years, yet to serve, the other two candidates had been nominated without specifying which was a candidate for the long, and which for the short, term. The council failed to canvass the returns of the recall election, basing its refusal upon this oversight. Wilson, thus deprived of his victory, brought suit to compel the council to act; but the court denied his petition on the ground that the results of the election were so confusing that nothing was to be gained by forcing the council to canvass the vote.[11]

Huntington Park.—The recall, as experimented with in the rising city of Huntington Park, defies classification. Its attempted use has been merely one of the numerous by-products of the continuance of small-town politics in a city which has grown from 5,000 to 35,000 population in less than a decade. If the ingenuity back of the petty political artifices that contending factions of Huntington Park officials have resorted to during the past few years

[10] *Los Angeles Times*, July 7, 1927.
[11] Wilson *v.* Blake, 169 Cal. 449.

could have been directed toward civic development, the city would not have offered so tempting a field for the depredations of underworld and public improvement interests.

The most recent installment of the story of Huntington Park politics opened with the election to the council on a "reform ticket" in April, 1926, of Messrs. Scofield, Flick, and Wood, giving them the upper hand over the faction headed by Mayor Blanchard. Scofield replaced Blanchard as mayor and department heads friendly to the new régime were substituted for those in office. The new dispensation collapsed the following year, however, when Wood had a change of heart and joined Blanchard and Fitch. Blanchard again acquired the mayorship and another wholesale dismissal of officials followed.

The temporarily subdued "reform element" now proceeded with the organization of a Law Enforcement League which concentrated its activities in a movement to recall the wayward Wood. The promoters of the recall, suspicious of Blanchard's intentions with regard to the petition, succeeded in filing it and in enabling Deputy Clerk Mahood to check it from the county records without his knowledge; but it was necessary to run the gauntlet of the mayor's "plug-uglies" to deposit the checked petition safely in the city hall vault. Mayor Blanchard ordered his chief of police to gain possession of the petition and in the ensuing fracas Mahood was injured. This attempted *coup d'état* resulted in the arrest, on a misdemeanor charge of interfering with a public officer in the performance of his duty, of the mayor, Chief of Police Imus, and Police Sergeant Taft. All three were convicted, fined, and sentenced to serve time in the county jail; but the sentence was suspended for two years on the ground that Imus and Taft had been following the orders of superior officers and that Blanchard had acted on the advice of the city attorney. Mahood

certified the petition as sufficient; but Blanchard's councilmanic majority refused, on flimsy pretexts, to call an election. An attempt by the Scofield faction to secure the dismissal of the three recalcitrant councilmen, under a little-used section of the Penal Code, for failure to perform their duty was thwarted by a unique decision of a rural judge.[12] Following this setback they chose to await the spring election of 1928 for a settlement.

Mayor Blanchard and his associates followed up their temporary success by circulating and filing, in the winter of 1928, a petition for the recall of their minority opponents, Councilmen Flick and Scofield. These two officials took advantage of the failure of the "notoriously ungrammatical document" to ask for an election, to seek to enjoin the city clerk from certifying the petition as sufficient. The contending factions were represented by two of the ablest attorneys available, the administration councilmen appropriating $500 from the city's treasury to compensate the expert whom they retained to aid them in rushing through the election. Superior Judge Walter Gates, after careful deliberation, refused the injunction; but the delay had been sufficient to prevent the holding of a special election before the general municipal election in April.

In the April election the Scofield party again came into power through the defeat of Blanchard and Fitch; Scofield regained the mayorship; and again a clean sweep was made of department heads, judges, and police officials. With the aid of a friendly legal department, it was a simple matter to permit the pending recall petition to disappear from view. After litigation over the manner in which the new councilmen were inducted into office, an attempt to unseat Councilman Wood for non-attendance

[12] See *below* pp. 359-361 for a discussion of this case. This recall movement is covered in the files of the *Huntington Park Signal* and the *Los Angeles Times*, especially for August 20-October 2, 1927.

at meetings, and the desertion for more fertile territory of a crew of cement paving lobbyists, there is a temporary lull in the political affairs of Huntington Park.

CAUSES, CAMPAIGNS, AND ELECTIONS

The physical conditions surrounding the operation of the recall in large and small cities are undeniably different; but the human element is very much the same. The city dweller differs only by a thin veneer of sophistication from his small-town compatriot. Under the surface he is as much governed by his impulses and prejudices as his country cousin. His civic education may be slightly more advanced, but, in comparison with the intricacy of city politics, it is doubtful that he is as well equipped. So the principles developed in the study of small-town democracy are entirely applicable to the analysis of citizenship in a great metropolis.

The average citizen continues to play the rôle of innocent bystander, though somewhat more dazed and unaware of what is taking place than the voter in the small town, where conditions are relatively simple. The same interplay of interests is at work; but the stakes are higher, and the tactics smoother and thus further removed from his ken. The voter's amateur standing as a member of the general public places him at a distinct handicap with the professional politician in the small town; and this disparity widens as the bosses grow bigger and more wily. His interests, his needs, and his limitations are fundamentally the same, and, irrespective of his place of residence, he is always susceptible to the age-old repertory of political sleight of hand. The efforts of civic leagues, improvement societies, and public-spirited leadership go only part way in restoring the balance, and the controlled public press is as likely to be confusing as enlightening. Under such conditions it is not to be expected that the public will employ the recall with much

greater facility and skill than it does the other tools of democracy, and it may even become a weapon of the professional manipulators themselves.

An analysis of the causes of recalls in the larger municipalities of the state reveals that the controlling influences and issues are fundamentally the same as in the small cities. In the first place, the activity of an opposition faction or disgruntled element, ready to take advantage of any sign of weakness on the part of an incumbent official, is discernible in every recall movement. Back of the charges on the recall petition and the devastating propaganda dispensed for popular consumption, which may or may not be authentic, moves the organized directing force of some individual or group bent on attaining some definite public or private purpose. This leadership may originate in some militant reform organization, in some dissatisfied business group, in a rival political faction, or in a temporarily organized group of disgruntled taxpayers. Not infrequently the active promoters of the movement are merely the agents for some interest behind the scenes.

Keeping in mind that these actualities of the game of politics are present in recall movements as well as in other political campaigns, it can be said that each of the thirty-one recalls under consideration have arisen from one or more of four general causes. These causes, one of which is usually the predominant rather than the exclusive factor in each recall movement, can be designated as, (1) the machinations of some faction or interest, (2) malfeasance in office, (3) inefficiency, (4) failure to respond to the will of the electorate.

FACTIONAL MACHINATIONS AS A CAUSE OF RECALLS

While the exploits of exiled small-town policemen in engineering recall movements on trumped-up pretexts can hardly be duplicated in larger cities, the same tactics have been employed on a larger scale by well-organized

minorities. No such group has the temerity to promote a recall without some grounds on which to appeal to the public; but some movements of this sort have been launched with only the flimsiest of justifications. As far as can be determined, in all instances in which the factional interest has predominated in attempts to recall elective officers, the public has been sufficiently alert to defeat the movement. The following cases are fairly typical:

Bakersfield.—An attempt to recall Mayor Hinman of Bakersfield in 1919 was the result of a factional political controversy. With the other members of the council divided three to three, he held the balance of power and irritated both sides by flopping back and forth. One faction became sufficiently aroused to instigate a recall movement which, it was generally conceded, would have been successful if a strong man had been chosen to run against the mayor as he was not popular in his own ward. The election, which was held only after the successful outcome of mandamus proceedings against the council,[13] resulted in 213 votes for and 328 votes against the recall.

Fresno.—A petition was filed with the city clerk of Fresno June 7, 1926, asking for the recall of Mayor Sunderland. The reasons given included certain damaging testimony concerning the mayor given at a police conspiracy trial; his alleged violation of civil service regulations; his responsibility for the 1925-26 budget which had increased the tax rate 32.5 cents; the probability of another increase for the ensuing year; and his "extravagance, recklessness, and unreasonableness." Of the 3,881 signatures to the petition 3,185, or forty-five more than the required number, proved valid and a special election was called for July 23.[14]

Mayor Sunderland denounced the movement as an at-

[13] Sidler *v.* City of Bakersfield, 43 Cal. App. 349.
[14] *Los Angeles Times*, June 9, 18, 1926.

tempt "to gratify the personal animosity of a few disgruntled individuals and self-seeking interests," and declared that he had refuted under oath, at the civil service trial, the charge that he had tampered with the civil service regulations.[15] He admitted that his department of public safety received in excess of sixty-three per cent. of the entire city budget; but explained this as due to the fact that the department included the divisions of fire, police, health, and parks.

One main factor behind the recall seems to have been an attempt by a local newspaper to discipline the mayor. This paper had supported him in his election campaign, but broke with him soon after his induction into office. Another major contributing cause was the fact that Sunderland had been elected by a small plurality out of a field of four. The attempt was made to unite the forces of the other candidates and thereby effect his recall.

The campaign was enlivened by the candidacy for the succession of three leading citizens, all of them running on a platform of lower taxes. In spite of this hostile alignment the mayor was sustained by a vote of 5,798 to 3,532. The vote, approximately fifty-four per cent. of the total registration, was slightly under that at regular elections.[16]

Pasadena.—The organization back of the attempted recall of two Pasadena commissioners in 1920, as far as can be ascertained, was the Southern Pacific Railroad. Commissioner Hamilton had been elected to office largely through the activities of a group of citizens organized to advocate and promote the construction of a municipally owned railway between Pasadena and Los Angeles. The fact that a preliminary bond issue for the project had received a majority, though not the necessary two-thirds vote, seemed to indicate popular approval; and Hamilton, with his colleague Salisbury, took the lead in investigat-

[15] *Ibid.*, July 8, 1926. [16] *Ibid.*, July 25, 1926.

ing costs and in securing three well-known engineers to prepare plans.

It was clear that the success of any such undertaking would prove embarrassing to the operations of the interurban subsidiary of the Southern Pacific which connected the two cities by a somewhat circuitous route. The first preliminaries seem to have caught these interests unawares; but when actual plans began to develop, their opposition began to be felt. One did not, of course, notice petition circulators in railroad uniforms passing from door to door. In fact, disgruntled members of the fire department circulated the petitions to recall the two commissioners, and the statement of grounds carried merely the vague charges that "said commissioner is not representative of the wishes of the majority of the citizens and electors of said city, and that the general policy of his official acts is in opposition to the wish and desire of the people of the City of Pasadena." But this did not obscure the fact that their advocacy of the municipal railway was the main cause of the disturbance.

The petitions filed December 6, 1919, proved insufficient, but were supplemented and the election called for February 11, 1920. As Pasadena was still following the old Los Angeles plan of recall election, each of the incumbents ran for reëlection against other duly nominated candidates. Both commissioners were sustained by decisive votes. Salisbury polled 3,554 votes to his opponent's 2,663. Hamilton, who had to run against three other candidates, received 3,235 votes as against their combined total of 2,949.[17] The total vote cast was approximately twenty per cent. short of that at the average general election in Pasadena.

Santa Barbara.—The fair city of Santa Barbara does not associate itself readily in one's mind with such mun-

[17] Minutes of the City Council of Pasadena.

dane matters as local politics. But such activities exist in profusion, personally conducted by a wily newspaper editor who has established a veritable monopoly in the management of the city's government. Posing as the defender of the workingman and the friend of the people, he is usually able to maintain a working majority of his representatives in the council. He has been eminently successful in ridding the city of city managers who interfered with his operations, and finally succeeded in a campaign to do away entirely with the embarrassing commission-manager form of government, and return to the more amenable mayor-council type with a ward system of representation. At the same time that his paper espouses the public good, the nature of the advertising indicates his ability to remain on friendly terms with such plutocratic agencies as the cement trust.

This enterprising molder of public opinion and city boss follows the successful policy of keeping his constituency constantly stirred by some crying issue; and in intervals of dullness has been known not only to manufacture issues, but even to stage crusades against his own henchmen. The attempted recall of a councilman in 1924 was representative of such tactics.

The councilman in question had been elevated to office with the aid and support of the editor-boss, but for some reason incurred his displeasure. The result was the circulation of a petition for the official's recall, which was unique in that it contained no statement of grounds whatsoever for seeking his removal. But the public did not have to go uninformed as to his supposed shortcomings. He was represented as being a person of low personal morals and integrity, and in an amazingly short time a large section of the scandalized public was clamoring for his removal.

The excitement aroused was indicated by the vote,

which ran as heavy as for general elections. The councilman was sustained by the uncomfortably narrow margin of 3,053 to 2,931; but has since received a more convincing vote of confidence by being returned to office in a general election.

Riverside.—One of the bitterest political feuds in the history of the city of Riverside culminated in three recall elections early in 1929 which resulted in the removal of the mayor and the retention in office of three assailed councilmen.

Mayor E. M. Dighton was elected in 1927 on a reform platform which promised the elimination of inefficiency and corruption from the conduct of local government. The Ku Klux Klan is said to have been prominent in the support of his candidacy. After a local certified accountant and a staff of Los Angeles auditors, employed at an expense of some $25,000, had failed to discover anything criminally irregular in the municipal accounts, the mayor made serious charges of dishonesty against city officials in an article published in a Los Angeles evening newspaper. In December, 1928, he was indicted by the county grand jury for criminal libel and misconduct in office, the accusations being based upon the statements made in his published interview.

A large group of citizens, believing that the mayor's conduct in office was not only ill-judged, but was bringing undesirable notoriety to the city, sponsored a movement for his recall and petitions were put in circulation December 4, while the charges against him were still pending. Dighton was found not guilty on the charges both of criminal libel and of misconduct in office; but he was recalled on February 8, 1929, by a vote of 3,656 to 5,473 for his opponent, Joseph S. Long.

The friends of Mayor Dighton opened a counter-offensive in December by circulating recall petitions against five out of six councilmen on the grounds of "in-

competency for the performance of duties" and "disregard of the wishes of the voters." Opponents of the Dighton faction claimed that the sole objection to the councilmen was their failure to take orders from the executive.

Petitions filed for the recall of Councilmen Redman, Wells, and Backstrand were found sufficient, a special election for the recall of the two former was held March 1 and for the latter March 22, and all three were retained in office by large majorities. The result was regarded as a vote of confidence in Mayor Long and brought to an end over a year of continuous political warfare between the executive and the council.[18]

MALFEASANCE IN OFFICE

The courts of the state offer an appropriate means of removing from office officials who are guilty of gross misconduct, and the people have not endeavored to usurp this judicial function in such cases by the use of the recall. In a few instances charges of malfeasance in office have been specified or suggested in the grounds for the recall of certain officials; but in these cases popular action has arisen from a well-grounded suspicion rather than from conclusive evidence which could be used in a court of law.

San Bernardino.—One of the earliest illustrations of this use of the recall occurred in San Bernardino in 1907. In that year two councilmen were recalled for voting to award a public printing contract to a firm not the lowest bidder.

Bakersfield.—The patented paving interests, in their ministering to the wants of the credulous public, have not overlooked the opportunities for service in the thriving city of Bakersfield. The citizens of the fourth ward recalled their representative in the city council in 1921

[18] *Los Angeles Times*, Dec. 5, 15, 16, 1928; January 5, 8, 10, 12, 29; February 9; March 2, 23, 1929.

because he was thought to be in the pay of one of these enterprising organizations. The reasons for the recall that appeared on the sample ballot suggested such a relationship and cited concrete instances of inefficiency and failure to uphold the wishes of his constituency:

The following are the reasons why Councilman Renfro should be recalled:

Because W. S. Renfro is incompetent to handle the business affairs of the city satisfactorily.

Because when a petition filed with the City Clerk of the City of Bakersfield signed by approximately 90 per cent. of the people in "Street District No. 76" protesting against paving certain blocks in the Fourth Ward on the grounds that there were no competitive bids and that the price was exorbitant, Councilman Renfro voted to ignore the protest and award the contract for Willite paving, thus going directly against the wishes of ninety per cent. of the people affected in his own Ward.

Because many of Councilman Renfro's acts are entirely out of harmony with the sentiment of the people residing in the Fourth Ward.

The vote:	On the Recall	For a Successor
	Yes 320	Arnold 144
	No 295	Hare 197
Total vote cast		615
Total vote cast last general election		524

Richmond.—The city of Richmond has experimented with the recall on two different occasions, in 1910-12 and in 1924. In both cases the movement was directed against six of the nine councilmen, in both cases malfeasance in office was one of the charges, and in both cases the officials were sustained. Despite the charge, in each instance, of official misconduct, hostility to the policies of the majority in the council and the maneuvers of the "outs" to secure control seem to have been influential factors in the two movements.

It was charged in the attempted recall initiated in 1910 that the six councilmen were guilty of:

(1) malfeasance in office; (2) that they had been parties to a political agreement by which the office of city engineer was traded in consideration of other appointments; (3) that such political trafficking was contrary to the spirit of the charter and detrimental to the public interest; (4) that the accused councilmen had united in denying the petition of a majority of the qualified electors in a matter of public policy; and further and finally (5) that the signers of the petition for the recall no longer desired the services of those particular councilmen.

Because of the obstructionist tactics of the councilmen themselves, the movement dragged through the courts, came to an election in 1911 in which one councilman was beaten, encountered further court proceedings, and came to a final election on April 8, 1912, with the following results:

INCUMBENTS		OPPONENTS	
J. J. Dooling	1007	Frank Lucas	931
Edward McDuff	1086	U. P. McHenry	802
J. C. Iwens	1147	Robert E. White	846
J. N. Hartnett	1128	Wm. Ellis	855
J. B. Willis	1054	Geo. Roth	822

The second recall election in Richmond was held September 5, 1924. The movement had been directed against six councilmen, but the name of one official did not appear on the ballot as he died just before the publication of the call for the election. The charges made in the petition were:

Malfeasance in office in that the lives and property of citizens and taxpayers have been placed in jeopardy by act and vote in destroying the efficiency of the fire department; violation of rules and regulations adopted for government of the fire department; employing or causing to be employed for administration of the affairs of the city, employees who are

inefficient and incompetent; and reckless and extravagant expenditure of public money with the result that the acquisition of industries in the city has been hindered.

The public was not sufficiently convinced of the authenticity or seriousness of the charges and voted to keep the incumbents in office.

INEFFICIENCY

The public, although it loves to grumble about the bungling of its elected servants, has learned that it is too much to expect one hundred per cent. efficiency and is very tolerant. When inefficiency is cited as a cause for recall from office, it is usually a subsidiary reason given for effect along with others of a more specific nature. But in one case, at least, the inefficiency of the impugned official was the leading reason for the attempted recall.

An unsuccessful attempt was made in 1916 to recall Mayor G. Wixon of San Bernardino. The formal charges against the mayor were inefficiency and extravagance; but the fact that he was an ex-clergyman furnished additional grounds for those of the opposition who were in favor of a more "liberal" town.[19] It should be noted, as well, that the defeated candidate for the position was prominent in the campaign for the recall.

Whatever may be said of the mixture of motives for the recall, there was no question about the inefficiency of the mayor. Easy-going, affable, and always anxious to please, he fell in line with too many extravagant suggestions for civic development, and unduly inflated the payroll to provide jobs for deserving applicants. Meanwhile such items as street lighting bills went unpaid and the city drifted into bankruptcy.

Although the recall movement against the mayor was defeated, it did scare him into a sense of responsibility for the predicament of the city, and he agreed with the

[19] *National Municipal Review*, Vol. V, pp. 380-381, July, 1916.

council to hire an expert accountant as a sort of city manager. This official suggested the desirability of a budget, persuaded the lighting company to hold off its bills, cut down the number of street lights, secured the dismissal of numerous useless employees, and in these and other ways succeeded in restoring the city to solvency.

UNRESPONSIVENESS TO THE WILL OF THE ELECTORATE

The frequently expressed opinion that the principle of the recall is violated when it is invoked for less than malfeasance in office involving moral turpitude, would seem to be a misconception of the intended scope and purpose of this device. The pronouncement of the court, in the San Diego case,[20] that the recall was "intended to check a growing forgetfulness on the part of officeholders of the principle that the duties of their office are to be discharged in the interest of the public and not their own," suggests the most effective and justifiable field of operation for the recall; and it is because of such unresponsiveness of public officials to the wishes of some portion of the electorate that the recall has most frequently been employed. When an official sponsors a policy which is clearly in opposition to the wishes of the majority of his constituency, the recall can be made a most effective weapon of defense; and even when the proponents of a recall prove to be merely a dissenting minority with insufficient votes to effect the removal of the object of their displeasure, they may still accomplish a useful purpose by deflecting an official from proceeding too far on a public policy of questionable merit.

The failure of officials to respond to the wishes of their constituencies has been an important charge in a number of the recall movements in the larger cities already considered. In Richmond, in 1910, the six council-

[20] Good *v.* Common Council, 5 Cal. App. 265.

men who were accused of uniting "in denying the petition of a majority of the qualified electors in a matter of public policy," undoubtedly would have been recalled had there not been two years of delay in calling the election. The councilman of Bakersfield who was recalled in 1921 was charged with ignoring a petition of protest signed by ninety per cent. of the people of one improvement district, and with acting "out of harmony with the sentiment of the people residing in the Fourth Ward."

A number of other recalls have been even more typically characteristic of controversies arising over public policy. These conflicts have, as in the smaller cities, developed over two general issues—public morals, and public improvements and finance.

San Diego.—The San Diego recall movement which languished in the courts in 1906-07 was the result of a futile attempt by the local prohibitionists to limit and regulate the liquor traffic. The Anti-Saloon League sponsored the circulation of a referendum petition to place before the people the entire controversy, which at that time resolved itself into "shall restaurants be permitted to serve wine with meals" and "shall dice shaking for drinks and cigars be permitted?" [21] When the council failed to submit the question to a popular vote, petitions were circulated for the recall of three councilmen; but obstructive tactics prevented the calling of an election.[22]

Long Beach.—An early recall movement in Long Beach, instigated by the liquor interests, was successful in removing a "dry" councilman from office. This recall was invoked in 1909 against Councilman E. W. Hoag by the advocates of an initiative amendment to the charter of the city of Long Beach, favoring the sale of liquor in restaurants, hotels and boarding houses. They objected

[21] *Los Angeles Herald*, January 23, 1906.
[22] *Above*, pp. 195-196.

because the councilman had voted to submit the question of amendment at the next general election instead of at a special election called for by the petition. Hoag's contention that the charter left the matter to the discretion of the council was sustained by the superior court in a suit brought by the petitioners against the city council; but other questions obscured the main issue and he was removed by a vote of 82 to 93 for his opponent, Fred Baldwin. There were fewer than twenty registered voters in the ward who failed to vote.

A classic example of the futile use of the recall by a "liberal" minority in an endeavor to subvert the morals of a respectable city occurred in Long Beach in 1921. This thriving beach metropolis has been described as "a superstructure of modernism, evoked by oil discoveries and harbor industries, imposed on a solid concrete base of Middle Western traditions." Until recent years the "transplanted cornfield element" has been the strongest and most influential part of the population; but a newer and more progressive element is now contesting their political control.

The lament of the ungodly that the town was run by the Methodists and that prayer meetings were used as political caucuses found outlet in 1921 in an attempt to recall William M. Peek, the commissioner of public safety. Commissioner Peek, formerly of Oelwein, Iowa, had incensed the returned soldiers by shutting down their $25,000 boxing arena on the pier, and had incurred the ill-will of the local shopkeepers, who had large stocks of one-piece bathing suits on hand, by sponsoring the famous "Peekaboo" ordinance. Believing that bathing suits without sleeves or skirts were a menace to public safety, he had supported legislation establishing with mathematical accuracy the maximum limits of permissible exposure.

It was charged that Peek's political opponents, includ-

ing a discharged chief of police, imported two girls from the Los Angeles "underworld," for $500, to circulate recall petitions. It appears that they solicited signatures without discrimination, even approaching the commissioner himself. At any rate, only 1,485 of 2,944 signatures were declared valid.

The advocates of the recall seem to have made no open fight for their objective, and Commissioner Peek took little active part in the campaign himself; but his friends formed the Peek Morals and Law Enforcement League, with seventy-one vice presidents, to preserve the purity of the city.[23] The attendance at the polls of but twenty-five per cent. of the registered vote was surprisingly light for so important an issue, but Peek was given an overwhelming vote of confidence of 5,200 to 1,300. Not only were there fewer votes cast for the recall than there had been signatures to the petition, but the commissioner received 1,100 more votes than in his original election. In a public statement following the election he attributed his victory "to the principles for which I stood, to keep Long Beach the cleanest, purest, and fastest growing city on the coast," and declared firmly that "I have no apologies to offer for the stand I have taken on the boxing or the bathing suit ordinances."[24]

Riverside.—A councilman of the sixth ward of Riverside was recalled in 1911 because he advocated the construction of a trunk sewer through a portion of his ward, to be paid by special assessments, contrary to the wishes of his constituency.

Santa Monica.—One of the best illustrations in recent years of a recall movement centering in a controversy over a program of civic development and beautification occurred in Santa Monica in 1926, with the recall of

[23] *Long Beach Press*, March 2, 5, 12, 14, 1921.
[24] *Ibid.*, March 16, 1921.

Mayor Steele. The mayor had identified himself with the conservative element in the community which looked upon the ambitious plans of the "progressives" for civic development as a speculative scheme for the benefit of certain real estate dealers. The "go-getters" of the chamber of commerce and realty board regarded the attitude of the mayor's crowd as detrimental to the growth of the city.

A recall movement was launched against the mayor in April, following his opposition to a bond issue for the improvement of Clover Field as an aviation field and recreation park. The charges against the mayor were briefly:

1. That he has resisted every proposal for the future beautification of Santa Monica.
2. That he has not prosecuted his duties as Public Health Officer.
3. That he used his power to frustrate and stultify the plans of the people to promote the welfare of the people.
4. That he has not kept step with the progress of the city, but his dictating tactics have hindered the development of the city.
5. That as Commissioner of Public Safety and Mayor he cannot be depended upon to advance the expressed desire of the people to properly improve Clover Field as an aviation field and recreation park.
6. That his temperament and training do not fit him to exercise the discretionary functions of his office.

The manager of the campaign against the mayor was the president of the realty board, who had led the successful fight for the Clover Field bond issue; and the candidate for the succession was Herman Michael, the president of the Santa Monica-Ocean Park Chamber of Commerce. The mayor's defenders included a "Committee Against the Abuse of the Recall," which con-

tended that the grounds were altogether inadequate. The mayor himself characterized the statements on the petition as "malicious and without foundation of fact." [25]

The election was close, but the mayor was recalled by a vote of 3,507 to 3,141. Slightly over fifty per cent. of the registered vote participated in the election. That the decision was more than a passing fancy of the public was indicated the following year when Mayor Michael ran against the former mayor in the general election and defeated him by 2,410 votes.

Stockton.—The city of Stockton experienced its first recall movement in 1928 in the form of a taxpayers' revolt. The combination of the chamber of commerce, the daily papers, the city manager, the mayor and the six others of the nine members of the city council which formulated the policies of the city government became so increasingly displeasing to a restive group of small taxpayers not admitted to participation in the inner circle of control, that a movement was initiated by them in February to recall the seven majority councilmen. They expressed dissatisfaction with the thirty-cent increase in the tax rate of $2, and condemned the administration for extravagance, for too ambitious and expensive municipal development, for subsidizing the chamber of commerce, for imposing an unbearable burden upon the small home owner, for failing to develop municipal ownership of water and light, and for retaining a $20,000 city manager who was "the most expensive piece of furniture in Stockton, with less to show for it." [26]

The dismissal of City Manager Ashburner was a major objective of the movement, and "Ashburnerism" and the arbitrary character of city-manager government drew

[25] *Los Angeles Times*, June 19, 1926.
[26] *Stockton Record*, May 4, 1928.

the most violent attacks of the proponents of the recall.[27]

Seven separate recall petitions were filed in May, each bearing over two thousand signatures, and it was necessary for the council to pass an emergency measure appropriating $800 to cover the cost of examination.

The promoters of the recall, confronted with one of the smoothest political organizations in the state, opposed by the largest business interests and by the daily newspapers of Stockton, and inadequately provided with funds, nevertheless managed to conduct a most ingenious and effective campaign. Sixty-two mass meetings were held in school buildings, and the *Forum*, a unique weekly publication, advertised as "a NEWSPAPER, not an ADPAPER, run as a mass meeting of citizens," was subsidized and widely distributed.

The election, while it failed to give the recall group control of the council, was so close as to raise the question of the ability of the administration to carry out its previous policies without modification.[28] Of the seven incumbents whose recall was threatened five were sustained in office, one of them by only a slight plurality, two by a majority of only three votes. The mayor was recalled, his opponent winning by a majority of five votes. The opponent of the seventh councilman died before the election but he was nevertheless given the highest vote. The council ruled that this member, though defeated, was entitled to hold his seat, but the question has been referred to the courts for a final decision. Meanwhile the recall group has perfected its organization with the

[27] City Manager Ashburner presented his resignation on August 27, declaring his reason for resigning was the impossibility of achieving his program of community progress without a united community behind him. (*Los Angeles Times*, August 28, 1928.)

[28] The original Los Angeles plan of election, whereby each candidate becomes a candidate to succeed himself, was followed.

hope of being able to secure control in the next campaign.[29]

BOARDS OF EDUCATION

School district officials are not among those classes of public officers made subject to recall by the constitution and general laws of the state. In view of the combustible character of school district problems, especially in rural areas, it is reasonable to believe that the extension of the law to this group would have resulted in a major contribution to recall history.

While boards of education in general are not subject to recall, the discrimination does not apply to cities with freeholders' charters. A few charters provide specifically for the recall of such officers, and it is probable that they are subject to this form of removal in all cities whose charters include provisions both for the election of boards of education and for the recall of elective officers.[30]

The recall of school directors has been resorted to on five occasions by cities of this class: Berkeley (1912), San Diego (1918), Berkeley (1925), Modesto (1926), and Bakersfield (1928). In Berkeley the elections in both instances failed of their purpose. Three school directors were recalled in Modesto,[31] and a like number in San Diego. The movement in Bakersfield was sidetracked in the courts.

Dissatisfaction with the policy of the assailed officials was the fundamental cause of each of the movements. In three of the five instances the dispute involved the question of personnel in the school system, with the disgruntled faction playing a prominent part in the campaign.

Berkeley, 1912.—An election was held in Berkeley,

[29] The information regarding the Stockton recall has been taken largely from the files of the *Stockton Record* and the *Forum*.

[30] *Below*, pp. 318-319 for ruling of the court.

[31] For an account of the Modesto recall see p. 144.

April 30, 1912, for the purpose of removing two school directors and one member of the council, *ex officio* member of the school board. The ground for seeking their recall was their failure to reëlect School Superintendent Bunker. The vote:

INCUMBENT		OPPONENT	
John A. Wilson	5752	Benjamin J. A. Bither	3895
Herman I. Stern	5791	Annie Little Barrie	3934
Elinor Carlisle	5692	Samuel C. Haight	3887

San Diego, 1918.—A movement was initiated in San Diego in 1918 to recall three members of the board of education. The reasons set forth in the petition were:

> She (or he) has held such office for more than six months last past and her removal is now sought upon the grounds that she has through personal motives or political designs destroyed the harmony and efficiency of our schools.

This statement had reference to a drastic overhauling of the personnel of the school system at the hands of the directors whose recall was sought. They had been elected, apparently, with the understanding that they would break with the traditions of the old board and work for the dismissal of a superintendent of schools whose personal reputation and conduct were displeasing to a certain austere element of the electorate. The three board members more than lived up to their campaign promises by bringing about the dismissal, not only of the superintendent, but of the principal of the high school and a score of the most popular members of his faculty as well. This step they asserted to be in the interest of economy, because the faculty had been overstaffed; but when the vacancies were filled with new recruits it was apparent that the loyalty of the dismissed instructors to the old régime had some connection with their banishment. The student body of the high school gave vent to its displeasure at the high-handed action of the board

by going out on strike, and was supported in this demonstration by numerous parents. Friends of the dismissed teachers and partisans of the deposed educational régime led the movement for the recall.

Following are the statements of justification given by the three members of the board under fire:

Laura M. Johns:

There never have been personal motives for my acts as a member of the Board of Education. There was nothing to be gained from such a course. My one object has been to further the best interests of the schools. The child and his educational welfare have come first in my mind. I have no political aspirations beyond service to our schools, hence I have not been influenced by any consideration of favor. Changes, in which I have acquiesced, were made with the thought of bettering the conditions under which those who remain will have to work during the coming year.

My campaign was frank and open, and I have redeemed the promises of my platform. I have helped bring about economy and efficiency, and notwithstanding opposition and resistance amounting to insubordination have opposed these efforts of the Board. Apparently the desire for revenge in the minds of some has been paramount to their loyalty to school interests with the result that the alleged injury to our school system has apparently been self-inflicted with the purpose of discrediting the Board. I am glad to submit my record as a member of the School Board to the consideration of the voters.

Mary W. Lancaster:

I made my campaign independent of all candidates. This is shown by the greater vote I obtained at the polls. At no time did I pledge myself to any definite action, but remained open to conviction and have since acted independently. A brief reference to the records of the Board will show that I voted at times with the others not sought to be recalled and at other times against them, but always as my best judgment and conscience dictated. This method of action, I have since followed, as shown by my voting to retain many of the dis-

missed teachers because of their efficiency. This course of action I shall continue to pursue.

That my vote was not actuated by politics is apparent to even the most casual observer. Neither was I actuated by personal motives for I regarded this as a service. I have attended summer schools to better fit myself to decide school questions. In conclusion I have been actuated solely by a desire for economy and efficiency, but above all to procure better education for the child.

JOHN URQUHART:

Reasons why I should not be recalled:

First: Because I dared to do that for which I was elected, to wit.: rid the City Schools of a political machine which had dominated the Public School System of San Diego for years.

Second: Because after a careful investigation of the situation, I found the number of teachers employed, to greatly exceed that justified by average daily attendance.

Third: Desiring to maintain a high state of efficiency, and to economize as far as practical, I saw the necessity of reducing the teaching force.

A hitch in the procedure developed when City Auditor Moody refused to sanction an appropriation for a primary election for the purpose of nominating succession candidates on the ground that the recall provisions of the charter did not apply to the board of education. The matter was carried to the appellate court where it was decided that under the state constitution and the city charter the members of the board are subject to recall, though the school district comprises certain territory outside of the corporate limits of the city and the board members are paid by warrants drawn upon the county treasurer.[32]

The election was finally held December 3, 1918, and the three directors removed by a decisive vote. The results:

[32] Ackerman *v.* Moody, 28 Cal. App. 461.

Shall Laura M. Johns be recalled?	Yes	6378
	No	3984
Shall Mary Walker Lancaster be recalled?	Yes	6279
	No	4032
Shall John Urquhart be recalled?	Yes	6415
	No	3910

To replace L. M. Johns		Mary Walker Lancaster		John Urquhart	
Lena Crouse ...	5873	Anna Connell..	5438	S. M. Bingham..	6060
Lillian Reynolds	413	Claude Woolman	839	John C. Sachs...	324

Berkeley, 1925.—A movement to recall Lester W. Hink, a member of the Berkeley board of education, developed in 1925 when the public was officially notified by the grand jury that there was criminal irregularity and official negligence in the city's school department.[33] Mr. Hink's integrity was not questioned, but in view of the "late unpleasantness in the business management of the School Board," it was "the opinion of a group of citizens that the people should be given opportunity to vote for an entirely new School Board, and as Hink was the only hold-over director, recall proceedings were necessary to force him either to resign or run again for office." [34]

Director Hink, the affable proprietor of Berkeley's most ostentatious department store, jauntily averred his willingness to resign if the request of but a hundred "representative citizens" could be produced. He agreed that "even a barber might come under this qualification if he had done his best for the city of Berkeley and had contributed to the Community Chest." [35] "When a pile of petitions a yard high and weighing some fifty pounds" was ready for filing, his promise was called to his attention by Mrs. Hector, the manager of the recall campaign. "In view of the fact," she declared, "that it is desirable to avoid a recall for the sake of the schools and the city as a whole we are asking Mr. Hink to redeem his public promise. Failure to do so publicly designates the 3,000

[33] *Berkeley Gazette*, March 17, 1925.
[34] *Ibid.*, March 30, 1925.
[35] *Ibid.*, March 17, 1925.

or so signers as 'unsubstantial' citizens, even though qualified voters and largely property owners under the city of Berkeley." Mr. Hink is said to have replied with somewhat less than his usual suavity.

At any rate the petition was filed, certified as sufficient, and the election held with the general city election on May 5. At this time Hink was reëlected by a narrow margin.[36]

Bakersfield, 1928.—Bakersfield became involved in a row over school district matters in 1928 when the board of education appointed L. E. Chenoweth, county superintendent of Kern county schools, to the city school superintendency held by C. E. Teach.[37]

The faction supporting Teach circulated and filed a petition for the recall of four members of the board. It was checked and certified as sufficient by the city clerk, but the opponents of the movement immediately took steps to avert the holding of an election. A temporary injunction was secured to restrain the council from calling the election, and on May 28 it was decided in the superior court that technically, owing to an ambiguity in the charter, the petition was not sufficient.[38]

THE RECALL OF A CITY MANAGER

The idea of applying the principle of the recall to appointive officers has never met with widespread approval. Many ardent exponents of the recall of elective officers have opposed this extension of its scope because it would be disconcerting to administrative experts whose function

[36] The Berkeley law does not provide for a vote on the question of the recall, but permits the incumbent to run for reëlection against other nominees. The preferential ballot is used.

[37] *Los Angeles Times*, April 5, 1928.

[38] The city clerk based his calculations on the last city-wide election, the nominating election of March 22, 1927. The charter provision makes it necessary that the petition be signed by twenty-five per cent. of the voters voting at the last general election, and it was ruled that no "general election" had been held in the city since 1911.

it is to carry out with skill and judgment already declared policies, rather than to reflect public opinion in the declaration of policy. For this reason the principle of the recall of appointive officers has had very little acceptance among the cities of California. Los Angeles alone has a general provision of this type, the charters of Long Beach and Compton provide for the recall of their city managers, and San Diego permits the recall of civil service commissioners.

The one successful attempt, under these provisions, to recall an appointive officer,[39] can hardly be held as an argument in favor of the principle. After eighteen months of very efficient service the manager of Long Beach was recalled in 1922 at a special election, in which approximately forty per cent. of the registered voters participated, by a vote of 5,747 to 4,990.

The following is a partial summary of the charges on which his removal was sought:

1. He failed to effect proper economies in municipal expenses.
2. He failed to solve the garbage problem.
3. He failed to effect street repairs.
4. He failed to effect storm drainage.
5. He failed to effect sewage disposal.
6. He failed to effect beach acquisition.
7. He failed to effect railroad removal.
8. He failed to secure the support of civic organizations.
9. He failed to inspire confidence as city manager.
10. He has not intelligently planned the city's progress.
11. Appointed as a non-resident, he has not seen the needs or future of Long Beach.
12. He has not had the necessary training.
13. He violated the charter by appointing to office a non-resident.

[39] A petition was filed in 1927 for the recall of the manager of Compton; but the fact that the prescribed three-month period of grace since the renewal of his contract had not expired invalidated the movement.

14. He has spent money unwisely.
15. He employed a non-resident zoning expert (*so-called*) which resulted in unjust zoning as to property values.
16. He increased municipal expenses over $150,000.
17. He has proven himself worthless as city manager, and his continuance in office will retard progress, destroy civic harmony, discredit the city charter, and nullify the sacrifices of the city council.

Notwithstanding this seemingly formidable indictment he was, it would appear, a very capable city manager, and lost his office because he was an outsider, because he stepped on the toes of certain more or less powerful men in Long Beach, and because the local populace was unenlightened as to the nature and requirements of the office. His introduction of the zoning system, with its interference with people's ideas of property rights, was a major factor in his removal.

An account that appeared in the *National Municipal Review* gave the following intimate explanation of the recall: "Four days after the selection of Mr. Hewes a group of men called at his office and requested him to remove the chief of police. The manager refused to act until he had studied the situation and informed himself as to the qualifications of the incumbent. A club was formed by several disgruntled citizens with the avowed purpose of removing the manager. This organization had the backing of several of the elected officials of the city who had and still oppose this form of municipal organization. . . .

"It is acknowledged that the recalled manager was not a politician and had no use for political methods in his work or appointments. He was instrumental in having passed a very well drafted zoning ordinance, an equalization of assessments, and other advance legislation. All of these measures had their opponents and with a crystallized opposition working against the usual apathy and

trust in a hard-working official the result was to be expected." [40]

Following the recall of Manager Hewes a movement was initiated to amend the charter by removing the provision for the recall of the manager. It met with opposition, however, by people who regarded the manager as a policy-forming as well as an administrative official. A new charter was rejected by a decisive vote in 1927 partly because under its provisions the city manager was not to be subject to recall by the people.[41]

[40] *National Municipal Review*, April, 1923.
[41] *Long Beach Sun*, March 10, 1927.

CHAPTER VII

THE RECALL IN LOS ANGELES, SAN FRANCISCO, AND OAKLAND

The recall, in its operation in the three large cities of California—Los Angeles, San Francisco, and Oakland—has covered the whole range of the fertile and intriguing possibilities of the plan. The removal of public officials by this method has been sought, in these cities, a total of seventeen times, on grounds ranging from moral turpitude and corruption to inefficiency and failure to represent the wishes of the citizens. Judges, mayors, and councilmen have been involved, with the ousting of a mayor, two councilmen, and three municipal judges as the net result. Los Angeles has tried the recall six times, San Francisco has resorted to it on four occasions, and Oakland has engaged in seven futile recall bombardments. Four of the five recall movements which have been successful serve to illustrate the effective and desirable employment of the device.

LOS ANGELES

It may well be imagined that when Los Angeles placed in its charter so revolutionary a principle as the recall, there was more than ordinary curiosity as to the auspices under which it would be ushered into actual use. In 1904, the year following its adoption, it received its first practical application, accompanied by most of the features that were to become generally characteristic of recall procedure.

In May, 1904, the city council voted, six to three, to

award the contract for official advertising to the *Los Angeles Times* at a price ranging from $10,000 to $20,000 above the other bids. The cry was raised that the action of the council was unwise, wasteful, and influenced by a desire to curry favor with the *Times*. The mayor refused to sign the measure but was overruled by the "Solid Six."

To certain reform leaders it seemed that the psychological moment had arrived for trying out the recall; but to attempt the removal of all six of the councilmen appeared to be a too ambitious undertaking. The reputation of the *Times* as an uncompromising opponent of organized labor provided a solution to the problem. Under the leadership of several members of the typographical union and other trade unionists, a movement was launched to recall Councilman Davenport of the sixth ward where many union-labor workmen resided.

Acting without the aid of an attorney, this group of sixth ward citizens drew up and circulated the first petition in the United States for the recall of a public official. It deserves to be quoted not only because of its historical significance but because of the specific nature of its charges:

To the President and Members of the City Council of the City of Los Angeles, County of Los Angeles, State of California:

The petition of the undersigned electors of the Sixth Ward of the City of Los Angeles sets forth the following facts:

(1) The City Council of the City of Los Angeles recently advertised for bids for the city official advertising for the ensuing year, commencing June 8, 1904.

(2) That in accordance therewith bids were received by the said City Council from the *Los Angeles Daily Journal*, *Los Angeles Herald*, *Los Angeles Express*, and *Los Angeles Times*.

(3) That the bid of the said *Los Angeles Times* was greatly in excess of all the other bids, being about $11,000 higher than the next lowest bid, and the giving of the said contract to the

said *Los Angeles Times* is an outrage and a robbery of the people's money, against which we, as citizens and taxpayers of said city, hereby enter our solemn protest.

(4) That J. P. Davenport, the member of the City Council from the Sixth Ward of said city, did connive at said perversion of city funds by voting in the affirmative on the letting of said contract to the said *Los Angeles Times*, and that by so doing he violated his oath of office and betrayed his trust; and therefore, under the provisions of the City Charter, Article XIX, Sec. 198c, we hereby demand that the office of said City Councilman of the Sixth Ward of said City of Los Angeles be declared vacant and a new election be called, as provided in said Section 198c of said City Charter.[1]

At the end of two weeks the necessary 716 signatures had been secured with 150 to spare; but the city clerk found nearly one-fourth of them invalid and it was necessary to supplement the petition. This was done within the ten-day limit and the council called the election for August 11.

At this point the history of obstructive litigation began. The "machine" interests instituted injunction proceedings and it was discovered that the circulators had ignorantly cut off the headings from the petitions and pasted them together in long rolls. This, the court held, invalidated the proceedings and it was necessary to start over again.

Within a week a second petition had been filed, this time in proper order. Again the clerk was very critical in his scrutiny, and a supplementary petition was needed. The petition was finally certified as sufficient, however, and the election called for September 16.

Once more injunction proceedings were instituted to prevent the holding of the election. The question of the constitutionality of the law, as well as of irregularities in the petition, was raised; and on the plea that all the

[1] Quoted from the *Los Angeles Times*, July 11, 1904.

Los Angeles county judges were interested parties, Judge Oster of San Bernardino county was brought in to hear the case. Although Judge Oster was regarded as a "machine" man, his decision, which denied the injunction, included a masterful defense of the constitutionality of the law.[2]

The main issue of the campaign was one in which the newspapers could enter wholeheartedly,—the *Times* violently against the recall, with three of the other local dailies providing enthusiastic support. While the *Times*, which had originally supported the adoption of the recall, aspersed both the principle and its sponsors, and proclaimed that the wide circulation of the paper rendered its seemingly high bid in reality the lowest; the proponents of the recall belabored machine politics and lampooned the irascible General Otis, owner of the *Times*.

Other issues than that of the printing contract soon appeared, the most important being the vote of the councilman in favor of extending the slaughterhouse area into his ward, and the publication of a letter from him to the cigar firm of which he was an agent proposing to use his influence as a councilman to sell cigars to saloons. The utility corporations supported the incumbent without any attempt at concealment, and the machinery of the Republican party was placed at his disposal by a resolution of the city central committee.

At no election ever held in the city had there been such throngs of workers at the polls. The betting was two to one in favor of the incumbent. But the voters of the sixth ward were not to be dissuaded by the wiles of the professionals and Davenport lost by a vote of 1,837 to 1,083, giving his rival a majority of 754. The outcome of the contest was hailed with general satisfaction throughout the city and was influential in hastening the adoption of the recall by other cities in the state.

[2] For consideration of this important decision see *below*, pp. 314-316.

The episode did not close, however, without its anti-climax. Davenport set a precedent for all officials threatened with recall by the tenacity with which he clung to his office. He contested the legality of the election in an appeal from Judge Oster's decision to the supreme court of the state. The supreme court decided that owing to a technical error of the city clerk in checking signatures from the wrong registration records, former Councilman Davenport had been illegally removed under the recall law.[3] The decision came too late to reinstate him as his term of office had expired, but the court ruled that he was entitled to full salary for the months during which he had been illegally deprived of his office.[4]

During the next year or two, occasional threats of recall were heard and several times angry individuals started out with petitions for trivial causes; but in every instance the attempts were frowned down by the people. It was generally recognized that the recall was to be invoked only in extreme cases, as a last resort, and that the movement, to be a success, must be supported by a considerable body of responsible citizens.

The most noteworthy of these ineffectual threats arose from the grant by the city council to the Southern Pacific Railroad of certain spur-track rights in the eighth ward, and led to the drafting of a petition for the recall of Councilman Healy of that ward.[5] The rival Santa Fe interests went so far as to donate legal services to draft the petition, but withdrew because of the undue publicity given to the episode.[6] The Southern Pacific and

[3] Davenport *v.* City of Los Angeles, 146 Cal. 508.

[4] The story of the Davenport recall is based on the following: C. D. Willard, "A Political Experiment," the *Outlook*, October 22, 1904. Eltweed Pomeroy, "The First Discharge of a Public Servant," the *Independent*, January 12, 1905.
Files of the *Los Angeles Examiner, Express, Herald,* and *Times.* Unpublished MSS by persons prominent in the movement.

[5] *Los Angeles Examiner,* October 12, 1905.

[6] *Los Angeles Record,* October 12, 1905.

the eighth ward property owners got together amicably and the recall was forgotten; but the *Times* seized the occasion to use its well-developed vituperative powers in indicting a heartfelt memorial: [7]

> The "recall" is a dead one sure enough. In the Eighth Ward it is not only dead but buried. . . .
>
> The celerity with which the Eighth Warders put the decaying carcass under ground was simply beautiful to behold. De Ate knows what to do when its political nostrils are offended by things which resemble "a rotten mackerel in the moonlight." They know how to conduct a funeral with decorum and yet with no unnecessary loss of time. . . .
>
> The "recall" is dead because it is innately carious. It was conceived in rottenness. It was brought forth in a condition of decay. No wonder that it is a menace to the moral health of the public so long as any of its disintegrating fragments remain above the ground.
>
> The higher courts will erect a suitable monument to its unsavory memory if they ever get an opportunity. It will not be a monument that its illegitimate parents will be proud of. The grave will not be strewn with flowers or watered with tears to any alarming extent. . . .
>
> The "initiative," "referendum," and "recall" are all in the same class of socialistic experiments. . . . It is to be hoped, however, that some way will be found to get an authoritative expression from the Supreme Court, as to the legitimacy of these triplets of freak legislation. . . .
>
> Meantime, as we have said, the "recall" is about as dead a thing as can be found in the city.
>
> The mourners at its obsequies were few and spooky.
>
> Let her R. I. P.

The recall was far from being defunct, however, and its next use illustrated its effectiveness as a potential force in averting official action hostile to the public interest.

[7] *Los Angeles Times*, October 19, 1905.

A machine-made city council voted to donate to dummies, supposedly representing the Huntington street railway interests, a franchise covering three miles of the Los Angeles river bed, having a value of at least one million dollars. The proposed action was kept a secret and the city was taken completely by surprise. Without debate, without discussion, against the earnest solicitation of the representative of the city attorney, and in the absence from the city of the mayor, the franchise was rushed through the council.

The "franchise grab" was resented by the press and by the business leaders of the city as "indefensible," as "dark lantern legislation," and as "the most outrageous thing ever seen or heard done in Los Angeles by a public body." The *Record* went so far as to declare succinctly:

> The boss did it. No better sample of machine politics ever was exhibited to this city than the control of the council in the river-bed franchise grab.
>
> One man only of all the citizens of Los Angeles controls the council; his word weighs more in the city hall than the combined protests of all the people. Walter F. Parker, political boss, agent for the Southern Pacific, owns the city council. Neither E. W. Gilmore nor any corporation could secure the passage of a franchise or right-of-way grant without the command of "Boss" Parker. Without exception the nine members of the council are chattels of the political boss.[8]

A slight mistake in the procedure invalidated the first action on the franchise and made a second vote necessary. This gave the people a fighting chance and they made the most of it. A cry was raised to "turn the rascals out," and preparations were immediately set on foot for the recall of the entire body; but the measure was quickly withdrawn and canceled and the councilmen

[8] *Los Angeles Record*, March 29, 1906.

allowed to serve out the short remainder of their terms.[9]

In the first ward, where the feeling against the council was especially warm, certain citizens were unwilling to let the matter drop; and, backed by the Public Ownership League, fostered a petition for the recall of Councilman Ford of that district. Within two weeks sufficient signatures had been secured, but before the petition could be filed the San Francisco earthquake disaster occurred and local political differences were temporarily forgotten.[10] The petition was finally filed on June 11 and found to be insufficient. A supplementary petition fell four names short of providing the requisite number and Ford was freed from defending his position at a special election.[11]

The next use of the recall in Los Angeles brought the voters of the whole city and not merely those of a single ward into action.

The mayoralty campaign of 1906 was a hotly contested three-cornered fight in which an independent candidate almost upset the calculations of the machine politicians. At the last minute the Republican machine averted the threatened catastrophe by throwing its vote to the Democratic candidate, A. C. Harper, and securing his election by a narrow margin. Mayor Harper was an officer of one of the largest local banks and a man of excellent standing in the community. It was the popular impression that in spite of the questionable auspices under which he had been elected he would conduct a successful and honorable administration.

Events soon dispelled the illusion that the mayor would

[9] C. D. Willard, "The Recall in Los Angeles," *La Follette's Magazine*, August 7, 1909.
Files of *Los Angeles Examiner, Express, Record,* and *Times,* March 27-April 3, 1906.

[10] *Ibid.*, April 3-April 21, 1906.

[11] *Los Angeles Times,* June 12, 1906.
Los Angeles Express, June 28, 1906.

rise above the level of the crowd that put him in office. He filled his administrative commissions with cheap politicians; and ugly rumors became current that not only was he shielding underworld crooks from the menace of the law, but was fraternizing with disreputable persons himself.

At the beginning of the second year of his administration Harper made a serious mistake that tended further to weaken public confidence. The future growth of Los Angeles was absolutely dependent upon the successful completion of a great aqueduct which was to bring water 250 miles from the High Sierras to the city. Its direction was in the hands of the Board of Public Works. When the first vacancy occurred under the Harper régime, a universal appeal went up that the then president of the board, a man of exceptionally high character and equipment for the work, should be reappointed, and the mayor promised that it would be done.

The only opposition came from the machine newspaper, and the mayor broke his word and flouted the entire community to appoint an intimate friend of the editor. It was told, by way of explanation, that the mayor had been called to the editor's office and "shown some snapshots of himself and companions with lewd women in a bagnio. Both the editor and the mayor denied this story with great vigor, but a report of a grand jury which presently appeared accused the mayor of having participated in an 'orgy' in a house of prostitution and this occasion was believed to be one of several." [12]

Meanwhile "the saloons did as they pleased. Gambling was evidently under police protection, a new 'red light' district was established under the patronage of the administration, hideous assignation dens flourished in

[12] Charles D. Willard, "The Recall in Los Angeles," *La Follette's Magazine*, August 7, 1909.

conspicuous places, and the record of crimes of violence exceeded all limits." [12] In 1908 an energetic city prosecuting attorney, Thomas Lee Woolwine, endeavored to institute a campaign of law enforcement against the most notorious houses in the segregated district; but the chief of police, giving as his reason that he was acting under orders from his superiors, refused to coöperate. Careful investigation produced a large amount of damaging evidence that high-up officials were profiting through inflated rentals and schemes of extorting huge fees from the inmates of the houses.[13]

The city prosecutor, convinced that he could expect no aid from the district attorney because of his political affiliations, started a succession of attacks through the newspapers to arouse public sentiment against the mayor and police commission on the charge that they were protecting vice. A lengthy denial from Mayor Harper and his commission was followed by the filing of libel suits against the *Los Angeles Express* and against Woolwine. At the same time District Attorney John D. Fredericks demanded that Woolwine go before the grand jury, as deputy district attorney, and make good his charges. Before he was able to proceed far with his story the district attorney discharged him from office and publicly declared his charges without the shadow of foundation.

To add to his troubles, formidable pressure was brought to bear on City Attorney Leslie R. Hewitt to take away his powers as deputy city attorney. When Hewitt refused emphatically to take such action an attempt was made by the Harper forces to depose him by means of the recall; but the movement progressed little further than the framing of a petition.[14]

[13] For Woolwine's own account see Thomas Lee Woolwine, "A Story of Law Enforcement," the *World's Work*, July, 1909.

[14] *Los Angeles Examiner*, October 2, 1908.

The mayor appeared to have unlimited confidence in the inertia of the public, for he celebrated New Year's Day, 1909, by filling a vacancy in the Board of Public Works with his chief of police, who, it happened, had been a member of the council which a few years before had sought to give away the million dollar franchise.

This ill-judged action by the mayor brought matters to a climax. The *Los Angeles Herald* had been quietly securing evidence of vice protection, especially with reference to the exploitation among liquor dealers and others of stock in the sugar and oil corporations partially owned by the mayor, and the immunity of the purchasers from molestation from the police department. The results were now made public in a series of startling articles published under the heading, "Is Vice Protected in Los Angeles," [15] which did much to rouse the city and pave the way for the institution of recall proceedings against Harper.

To the anti-machine faction of the Democratic party went the credit for making the first substantial public demand for the recall of Mayor Harper. It was the leading civic organization of the city, however, the Municipal League, that actually promoted the recall. A meeting was held January 20 in which over 200 prominent citizens participated. After full discussion of the situation it was decided, with only five dissenting votes, that for the good of the community Mayor Harper should be recalled.[16] The executive committee was instructed to prepare and circulate petitions.[17]

[15] *Los Angeles Herald*, January 7-March 25, 1909.
[16] *Ibid.*, January 21, 1909.
[17] Text of the recall petition:

PETITION FOR THE RECALL OF MAYOR HARPER

To the Honorable City Council of the City of Los Angeles, Los Angeles County, California.

We, the undersigned, electors of the City of Los Angeles, hereby seek the removal of A. C. Harper, present incumbent of the office of Mayor of the said City of Los Angeles, and we hereby demand the election of

Eight thousand valid signatures were necessary to demand the holding of a recall election. In less than two weeks nearly 11,000 had been secured, more than the total number of votes cast for Harper for mayor. The petition was filed with the city clerk on February 9, found to contain about eighty-eight per cent. of valid signatures, and the election set for March 25.

It was not to be expected that the forces aligned with the Harper administration would give up without a fight. The leaders of the underworld, the machine politicians, the grafters, the utility corporations, together with a large reactionary newspaper, constituted a formidable opposition to the movement. Many well-meaning citizens were led to back Harper by the cry of "persecution" and the charge that the recallers were a group of disgruntled "poor losers." "Booster" organizations were formed to fight the "knockers," and the Merchants and Manufacturers Association raised the cry that the recall would hurt business and give Los Angeles a bad reputation with the tourists.

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a successor of the said A. C. Harper, so sought to be removed, in accordance with the provisions of Section 198c of the charter of the City of Los Angeles.

We further represent to your Honorable Body that we are qualified electors of said city and entitled to vote for a successor of said A. C. Harper, and that the following is a general statement of the grounds for which the removal of said A. C. Harper from the office of Mayor of the City of Los Angeles is sought:

That he has during two years of administration shown himself to be incompetent and unfit for the position he occupies.

That he has frequently abused the appointing power by selecting, for personal and political reasons, men utterly unfit for the offices to which they were appointed.

That he and certain of his appointees on the police commission have been active promoters and are large holders in business enterprises whose stock has been systematically marketed among the very people and interests which that commission is called upon to regulate and control.

That the natural result of these improper appointments and the business relationship above referred to has been a failure on his part to enforce impartially the laws and ordinances of the city.

The continuance in office of A. C. Harper as Mayor of the City is a menace to the great business enterprises upon which the city is engaged.

Great difficulty was experienced in securing a candidate to run against Harper. After a mass meeting of representative citizens failed to find a candidate the decision was finally left to a committee of fifteen headed by Judge John D. Works. When, after a score or more had refused the nomination, it became evident that some one would have to assume the responsibility, ex-county supervisor George Alexander, who had previously refused, agreed to run.

It was the mayor's libel suits that finally proved his undoing. While the recall movement had been developing Mr. E. T. Earl, owner of the *Express*, against whom one of the suits had been filed, had employed detectives who not only secured signed statements detailing the major portion of the system of municipal graft and corruption but even the account books showing how the money was divided. The confession obtained from one of the principals of the prostitution graft involved in the so-called "red light district syndicate" the mayor and the ex-chief of police who had been appointed to the Board of Public Works.[18]

When the ex-chief was confronted with the evidence he promptly resigned in the hope that the story would not be made public. Harper was called to Mr. Earl's office and upon being informed as to the evidence, not only resigned the office of mayor but filed a request that his name be dropped from the recall ballot.

Harper, in explaining his retirement under fire, declared that he would not have resigned even under threat of exposure had he not been abandoned by "Boss" Parker and his coterie of Southern Pacific politicians.[19] This group saw that Harper was done for, and evidently thought they were executing a masterly coup by permitting him to resign. It was their hope that it would put

[18] T. L. Woolwine, *op. cit.*, p. 11,832.
[19] *Los Angeles Examiner*, March 15, 1909.

an end to the recall election and make it possible for them to influence the appointment of a successor. There was immediate and violent controversy over this point; but it was settled against the "machine" by the denial by the superior court, of an application for an injunction against the holding of the election.

When it became evident that the election could not be averted the machine politicians threw their support to Fred C. Wheeler, Socialist candidate; but Alexander was elected by a small majority of 14,043 to 12,341. The smallness of the vote, some 4,000 below the previous mayoralty election, was due to the fact that most people considered the issue settled when Harper resigned and his faction failed to nominate a candidate. Practically all of Harper's appointees on his commissions resigned, a new chief of police was appointed, and Mayor Alexander gave the city a very satisfactory administration.

For seventeen years after the recall of Mayor Harper the trusty recall musket accumulated rust behind the door. But in 1926 it was brought out by a group of citizens of the first district and trained on their councilmanic representative, Charles E. Randall. It was charged that Randall did not represent the best interests of the district and had failed to live up to liberal preëlection promises of what he would secure for the district. His opponents cited numerous proposed projects with regard to which "his performance had been zero," and asserted that he had declined to listen to the pleas of an important section of his constituency in the matter of highways and had directed the main arteries so that they favored a subdivision he was promoting.[20] There were also objections to certain street lighting proceedings, since abandoned by the council, which Randall had espoused.

In extenuation of Councilman Randall's seeming lack of responsiveness it should be explained that his baili-

[20] *Los Angeles Times*, September 21, 22, 1926.

wick covered a partially undeveloped territory two hundred nineteen square miles in area, dotted with growing communities whose local interests were almost impossible to harmonize with any one general plan for the integration of the district. The problem of public improvements presented in urbanizing this swiftly developing territory was typical of those which were jeopardizing the careers of many of the public officials in the metropolitan area of Los Angeles.

Mr. Randall was too seasoned a campaigner, however, to be greatly discommoded by such a trivial matter as a movement for his recall. Active service in the state legislature and three terms in Congress as a Republican, Democrat and Prohibitionist had developed his political resourcefulness. With the same versatility that he used in 1924 in running for a Congressional nomination on all except the Socialist ticket, he made concessions to certain opponents, and was sustained in office in a special election, September 21, by a vote of 3,897 to 2,595. The participation of but slightly over a fourth of the registered vote of 24,977 indicated a general lack of interest in the controversy.

The year following the failure to recall Councilman Randall saw the launching of a movement to recall Mayor George E. Cryer, instigated, strangely enough, by Mr. Randall himself. This effort to oust the mayor threatened for six months to force a crisis in Los Angeles politics, and then subsided without coming to an election, but not without making a special contribution to the history of recall technique.

Mayor Cryer was elected for a third term in 1925 after a campaign that hinged on the fundamental issue of municipal ownership of light and power in Los Angeles and the development of the Colorado river. He won against a distinguished opponent, not because of having shown any marked ability as an administrator and chief

executive, but because he had proven loyal in the support of these popular enterprises.[21]

The reactionary opponents of the Cryer régime, headed by the local utility corporations and their affiliated interests and acting through their spokesman, Mr. Harry Chandler and his *Los Angeles Times*, persuaded Judge Benjamin F. Bledsoe of the United States District Court to resign his post and enter the mayoralty race against Cryer. Judge Bledsoe, an able apostle of one hundred per cent. Americanism, attracted warm commendation and support because of his willingness to relinquish the security of the bench for the uncertainties of active politics; but the fact that he was the protégé of the enemies of municipal ownership proved his undoing. Despite his repeated assertions that he stood firmly for the development of the city's water and power system and for the construction of a high dam at Boulder Canyon, he could not shake off the suspicion that arose from his support by Harry Chandler, the *Times*, and the power companies. This doubt, popularized by the slogan, "Harry calls him Ben," resulted in Mayor Cryer's reëlection.

The following two years of Mayor Cryer's administration were not eminently successful. While there was no suspicion of irregularity in his personal or official conduct he appeared to follow the line of least resistance instead of providing vigorous leadership. He was in constant trouble over his appointments, certain members of his administrative commissions were suspected of profiting personally from their official connections, his police commission was accused of condoning a serious laxity on the part of the police department in the suppression of underworld activities, and he was reputed to take orders

[21] For an interesting sketch of Mayor Cryer see John T. Morgan, "Mayor George E. Cryer of Los Angeles." *National Municipal Review*, Vol. XVII., No. 1. (January, 1928.)

from his friend, the local "boss." [22] The popularity of the administration was being further lowered, moreover, by the rapidly mounting burden of special assessments for public improvements, which were becoming too heavy for the small property holder to carry.

The councilmanic campaign of the spring of 1927, in which the same conflicting interests were at work as in 1925, did away with a boss-controlled council and left the administration with only three or four dependable votes out of the fifteen. Friction over the mayor's ill-judged police, harbor, and other commission appointments, with the prospect of serious clashes of policy, was the immediate result.

[22] The following editorial represents the attitude of many of the mayor's critics:

"Instead of appointing the right kind of men to his police commission Mayor Cryer appoints either brainy bad men or ignorant or incapable good men.

"And he appoints these men as the result of the manipulation of the politicians who are in alliance with the graft collectors who control the police department in the interests of gambling, prostitution and the disposal of stolen diamonds and other stolen property.

"Morally good men who are weak, incompetent, incapable of grasping the situation or incapable of accomplishing anything, are just as valuable on the police commission to the crooks as are those who find a way to personally profit from their positions by business deals with those who seek police commission favors or as are those who are just morally bad and use their positions to protect them in their immorality.

"A commission thus made up is manipulated by the shrewd politicians who manipulate the Mayor and through the commissioners and the Mayor manipulate the conduct of the police department.

"Los Angeles is different from Chicago and New York in that we have fewer gang murders.

"In our own city commercialized vice is so firmly under the control of one gang that any would-be rival gangs do not get a chance to obtain power.

"In Chicago and New York there are rival gangs of great strength and they fight among themselves not for the control of the police department, which accepts dictation from any of them, but for the control of the gambling and prostitution privileges in given territory.

"In our own city the prostitution rights are controlled by one man, the gambling rights by another, the stolen property rights by another, and all of them in turn are controlled by the master politician who manipulates the machinery of government." (*Hollywood Citizen*, July 5, 1928.)

To certain sapient observers conditions seemed auspicious for a further house-cleaning. They interpreted the vote as indicating popular disapproval of the existing régime, and were led to believe that the utility corporations and other anti-administration interests would give generous support to a recall movement against the mayor.

Councilman Randall, sensing an opportunity for aggrandizement and public service, suggested to his secretary, Mrs. Estelle Holman, that she undertake the promotion of such a movement.[23] Mrs. Holman, likewise interested in political advancement and public service, and persuaded that abundant campaign funds would be forthcoming, set out in July on an almost single-handed crusade for some thirty-two thousand signatures to Cryer recall petitions that demanded his removal on the grounds that:

(*a*) His administration "is the most vicious, inefficient, and disdainful which the people of the city of Los Angeles have ever been compelled to endure.

(*b*) That deplorable conditions in the Harbor Board are due to the administration of Mayor George E. Cryer.

(*c*) That enforcement of laws against open places of dissolute character is notoriously lax.

(*d*) The ruthless orgy of overlapping assessments for storm drains in wholly unnecessary localities in order that favored contractors may reap high benefits has shocked the city.

It soon became apparent that Mr. Randall had misjudged the significance of the June election; and the hopes for the support of three newspapers and the promises of financial aid from the conservative interests failed to materialize. This had a possible explanation in the fact that the Cryer administration was promoting an ambi-

[23] Testimony of Councilman Randall in a suit brought by Hugh Robertson against Mrs. Holman for unpaid wages. *Los Angeles Times*, May 1, 1928.

tious program of public improvements, and the conservative financial interests and their satellites feared that a change might produce an anti-improvement administration. It was reported that a utility corporation which had promised a large contribution because of its yearning to defeat municipal ownership was prevailed on to make temporary sacrifice of its special interest in behalf of the more important general interest of the group with which it was aligned. Further contributing to the unpopularity of the movement was the difficulty of securing a high type of candidate to oppose the mayor, and the threatened expense of $100,000 for the special election.

Mrs. Holman soon discovered that to fight the city administration single-handed was a somewhat desperate undertaking. Volunteer workers proved undependable, trusted lieutenants turned out to be political charlatans, and it developed that a joker in the charter made possible the recall of an official by a majority vote and his election to succeed himself by a mere plurality.[24] All this was discouraging to the quixotic promoter of the movement, but she kept stubbornly at work. An alleged frame-up by police officials of a councilman who was seeking to oppose vice conditions in the city gave temporary impetus to the securing of signatures, and a certain bellicose clergyman used his radio very effectively for the cause; but it was not until December that the petition attained dimensions sufficient to justify filing.

At this point unforeseen complications began to arise. The expiration of the voters' registration list at the end of December raised the question as to the legality of continuing the movement after that time, and a recently adopted charter amendment required that all petitions must be precincted before submission to the clerk. This necessitated not only time but an estimated charge of $600 upon an already bankrupt treasury. The smooth

[24] *Above*, p. 71.

machinery of official obstruction began to function at the same time. Careful deliberation by the city attorney was necessary before the city clerk would permit the use of his office records for the precincting of the petitions, and the proffered aid of a newly organized Taxpayers' Protective Association turned out to be a means of permitting some of the mayor's loyal supporters to precinct many names incorrectly.

On Friday, December 30, Mrs. Holman filed with the city clerk a petition purported to contain over 40,000 signatures. A second petition, supposedly circulated by the helpful Taxpayers' Protective Association, and said to bear over 50,000 names, was scheduled to be filed the next day; but vanished in thin air.[25]

City Clerk Dominguez' checking of the petitions broke all records for speed. A hundred special deputies, working night and day, completed the work in less than a week.[26] The mayor's chief campaign manager, with an alert staff of assistants, maintained careful supervision to see that no name was counted that could for any reason be dropped; while Mrs. Holman bombarded all officialdom from the city council to the district attorney with *communiques* charging deliberate intent "to defraud the people who have honestly signed the Petition." [27]

Dominguez presented his certification to the council January 9, showing that of 36,067 names submitted, only 13,313 were found to be valid. He termed the petition "the worst ever submitted to the City Council." [28] Mrs. Holman protested that thousands of names had been eliminated unfairly, but failed to carry the matter to the courts. Her supplemental petition contained but 2,495 signatures, and the recall action against Mayor Cryer died officially with the expiration of the time limit.

[25] *Los Angeles Times*, December 31, 1927, January 1, 1928.
[26] *Ibid.*, January 5, 8, 1928.
[27] Letter filed with the city council January 7, 1928.
[28] *Los Angeles Times*, January 9, 1928.

The most recent victim of the recall epidemic precipitated by the controversy over special assessments for public improvements was Councilman L. R. Rice-Wray of the sixth district of Los Angeles. A petition demanding Rice-Wray's recall containing some 4,800 names was filed June 11, 1928, and the recall election held in conjunction with the state-county primaries on August 28 resulted in his removal.

Councilman Rice-Wray, like Councilman Randall, represented a large, rapidly growing, only partially developed district in need of extensive improvements such as paving and storm drains. He was elected in 1927 on a platform favoring the rapid installation of such improvements; but his constituency soon found that its desires exceeded the capacity of its pocketbook. Immediately a clamor against special assessments was raised, and Mr. Rice-Wray found himself under attack not only on account of the program of public improvements which he was fostering according to preëlection promises, but because of the projects promoted by his predecessor, the bills for which were now making their appearance.

It was a controversy over a projected storm drain which brought matters to a head. Rice-Wray's asserted inefficiency and arbitrary attitude toward a petition of protest against this project, said to have been signed by 18,000 people, led to the holding of mass meetings of citizens of the district at which the recall movement was started.[29] The petition charged him with failure to carry out his campaign pledges, with mishandling of the proceedings for portions of the storm drain project, with ignoring the protests of property owners, and with refusal "to meet his constituents in open forum to discuss questions of interest to the people of his district." [30] The assailed councilman immediately secured the abandon-

[29] *Los Angeles Times*, May 1, 1928.
[30] *Ibid.*, June 12, 1928.

ment by the council of the storm drain proceedings, but his opponents declared their lack of interest in "any last-minute subterfuge in an effort to save his job." [81]

While the main issue was that of special assessments, there were other influences behind the movement. A former councilman whom Rice-Wray had defeated for re-election was regarded as the chief instigator, and the fact that Rice-Wray was one of the few dependable councilmanic supporters of the "administration" lent color to the report that the recall was being financed by anti-administration interests.

The executive committee of the Municipal League, in a letter to Mr. Rice-Wray, gave an accurate estimate of the merits of the recall movement against him. "It is our opinion," they said, "that the reasons asserted by your opponents for your recall would, with equal propriety, justify the recall of the rest of your colleagues in the City Council. This is, of course, absurd on the face of it. The recall should not be resorted to for the satisfying of a grudge or for personal aggrandizement, and we fear we detect considerable of both in the present proceedings in the Sixth District."

SUMMARY OF RECALL MOVEMENTS IN LOS ANGELES

Date	*Official Involved*	*Petition Insufficient*	*Official Sustained*	*Official Removed*
1904	Councilman J. P. Davenport			*
1906	Councilman Ford	*		
1909	Mayor A. C. Harper			*
1926	Councilman Chas. E. Randall		*	
1927	Mayor George E. Cryer	*		
1928	Councilman L. R. Rice-Wray			*

[81] *Ibid.*, May 9, 1928.

The twenty-five-year record of the use of the recall in Los Angeles on the whole does credit to the moderation and the intelligence with which the instrument has been locally employed. The recall has been used sparingly; a real grievance has existed in all cases in which petitions have been filed; and in the instances of two of the three officials actually removed a useful purpose was accomplished. It is significant, however, that three of the total of the six recall movements, with threats of others, have occurred in the last three years. This sudden increase in the use of the recall is, as it has been in other localities, an indication of some political maladjustment in need of correction; and it will not be surprising to find the above list materially augmented before political normalcy in Los Angeles is restored. Responsibility for this state of affairs may be attributed in part to the unavoidable problems arising from rapid growth; but also to a city administration which inspires little public confidence in its management of such important departments as those of police and public works; to rival underworld, financial, and political interests behind the scenes who contribute to the obfuscation of the public by their schemes to hold or gain governmental control; to the industry with which manufacturers of paving materials, contractors, and bond sharks seek to use the state laws under which public improvements are made to load unbearable burdens of special assessments on the property owners; and to a controlled press which too frequently is neither constructive nor dependable in its molding of public opinion on local problems. While recall movements are readily engendered by such conditions, they cannot be expected to provide a sufficient and complete panacea.

SAN FRANCISCO

San Francisco has used the recall effectively and with discretion. It has been resorted to in but four instances,

all of them, singularly enough, connected with the administration of justice. In 1913 a police judge was recalled; a recall movement against a city attorney terminated in the courts in 1916; an attempt to recall a district attorney failed in 1918; and in 1921 two police judges were voted out of office in a recall election. The ousting of the three judges, the only outstanding cases in California of the successful application of the recall to the judiciary, is of special interest because of the dire forebodings with which this phase of the law of the recall had been regarded by leading jurists.

The first of these recalls, which occurred in 1913, was nationally commented on and contrasted with Elihu Root's pronouncement that "the people, if they get the power, will strike down and degrade all just and righteous members of the judiciary." It was generally agreed that in this instance, at least, the fearful forebodings of the critics of the judicial recall were not justified.[32] The following account of the recall is taken from the *Independent*: [33]

Charles Weller, of San Francisco, enjoys the distinction of being the first judge in the United States to be recalled by the people. California is one of the few states that permit the recall of judges, and on the twenty-second of April this constitutional provision—adopted in 1911—was given its first trial.[34] At an election held on that day Weller, a police judge, was ousted from office by the close vote of 30,784 to 29,934.

It is an interesting and significant circumstance that his recall was brought about by the women of San Francisco. It had its beginning in the righteous anger of three or four women when they learned that this judge had arbitrarily re-

[32] See the *Literary Digest*, XLVI, p. 1048 (May 10, 1913), for press comment on the Weller recall.

[33] *Independent*, LXXIV, p. 1014 (May 8, 1913).

[34] The recall was conducted under the provisions of the San Francisco charter.

duced the bail that had been fixed by another judge in the case of a man charged with assault upon a young girl, with the result that the man forfeited his bail and escaped trial. Investigation of court records followed, and it was discovered that bail in similar cases of crimes against girls had rarely been fixed beyond $500 and was sometimes placed as low as $50. Also, that it was a habit of the court to grant long series of continuances, with no testimony taken in many cases, until such a day as the girl in the case would happen not to appear as a witness, when the case would be immediately dismissed.

These revelations so aroused the investigators that an appeal was made to the women voters of the city to join together for the purpose of securing the recall of a judge who was so flagrantly abusing his powers and deliberately permitting the miscarriage of justice. Forthwith the Recall League of San Francisco was organized, and in a short time it had secured the required number of signatures to the preliminary petition for a recall election. The movement was backed by the religious and progressive elements of the city, and was opposed for varying reasons by the Bar Association, the "big interests," and organized vice.

Weller's chief defense was that he had merely been following a custom which he had not created and for which he was not responsible. Wiley F. Crist, his opponent in the election, and who now occupies his place on the bench, in commenting on the recall, said: "The campaign was not aimed at Judge Weller solely, but rather at the system which has been increasing instead of decreasing the commission of crime. And the recall of Judge Weller signifies that the people no longer have the superstitious awe of our judicial oligarchy that has existed in the past." . . .

The case of the attempted recall of City Attorney Percy V. Long, in 1915, was somewhat inconsequential except in its contribution to the mounting accumulation of recall litigation. It seems that for some reason or other Long fell into disfavor at the City Hall and with Mayor Rolph. One Daniel O'Connell, a rival attorney,

appears to have interpreted the situation as indicating Long's political weakness, for on September 27, 1915, he filed a petition for the city attorney's recall.

Although the petition contained 10,395 signatures, constituting at their face value a surplus over the required number of ten per cent. of the total vote cast for mayor; it ran afoul of the election commissioners, who refused to examine it because the dates of signing were missing.

The promoters of the recall promptly resorted to the courts for aid. Against the defense of the commissioners that dates were required by reason of the provisions of the general law of the state as amended in 1915,[85] they contended that the local charter provision, which established no such requirement, took priority over the general statute. The supreme court sustained them in this contention and granted a writ of mandamus to compel the board to perform its duties with respect to the petition.[86]

Temporarily the outlook for Long was inauspicious. But upon investigation nearly half of the names on the recall document turned out to be in one way or another invalid, and the issue never came to an election. The case as a whole seems to have been largely a question of personal animosity between Long and O'Connell.[87]

Reminiscent of the third recall movement in San Francisco is the case of Tom Mooney, who has completed twelve years of the life sentence given him because of his alleged complicity in the bomb explosion at the San Francisco Preparedness Day parade, July 22, 1916, which killed ten persons and wounded forty more. For the sake of perspective in considering the recall agitation for the recall of District Attorney Charles M. Fickert which arose from this notorious case, certain significant facts and developments regarding it may well

[85] *Above*, p. 77.
[86] Schaefer *v.* Herman, 172 Cal. 338.
[87] *San Francisco Examiner*, March 19, April 23, 1916.

be kept in mind. Mooney, a well-known radical, was first condemned to death, and his sentence commuted to life imprisonment only after the strongest urging by President Wilson. The testimony on which he was convicted has since been proved false. Frank C. Oxman, star witness for the prosecution, turned out to be a perjurer who was not even in San Francisco at the time of the explosion, but was hired to come and recite on the witness stand a mass of falsehoods prepared for him by the police. Equally false was the testimony of the other chief witnesses, John McDonald, a thief; Estelle Smith, a prostitute, and four other persons. In consequence the trial judge, three assistant district attorneys, the foreman of the jury, and eight of the other nine living jurors have since united in asking a pardon both for Mooney and for W. K. Billings who was sentenced with him. Their taint of radicalism, however, has acted as a deterrent to any such action on the part of California governors.[38]

The movement for District Attorney Fickert's recall arose ostensibly from his conduct of the Mooney prosecution; but there were other factors in the situation that made him susceptible to attack, among them his hostility to organized labor and his alleged connection with the underworld interests of San Francisco. The first organized action for the recall of Fickert seems to have come from the San Francisco Labor Council, which, in April 1917, adopted resolutions demanding his removal for "his conduct of the Mooney case."[39] The petition for his recall, filed July 21, specifically charged that he had failed to prosecute the rings of commercialized vice and that his public attitude showed clearly that he intended to "walk to the governorship over the body of prostrate labor."

[38] Editorial comment in the *New Republic*, Vol. LV, No. 711 (July 18, 1928).

[39] *San Francisco Examiner*, April 8, 1917.

Fickert's retort was that his vigorous tactics against Mooney and Billings had aligned all the "anarchists" in San Francisco against him.[40] But the fact that forty-four clergymen of the city massed against him in an endorsement of Sweigert, the leading candidate for the succession, demonstrated that there was more than "anarchism" behind the demand for his removal.

The district attorney evinced no intention of permitting the issue to come to an election until he had exhausted the obstructive possibilities offered by the courts. His attempts to prevent the certification of the petition by applications for a writ of prohibition and for an injunction were checkmated when the proponents of the recall secured from the supreme court the grant of a writ of mandamus to compel the registrar to certify the result of his examination of the petition.[41] Far from subdued by this reversal, Fickert filed application for a writ of review to annul the certificate of the sufficiency of the petition and asked that in the meantime the election commissioners be restrained from calling the election. He alleged that one hundred seventy-four sections of the petition were fraudulent and that Registrar Zemansky had ignored the evidence and refused to investigate. The supreme court refused to interfere with the registrar's ministerial jurisdiction, so the election was called and the delayed campaign regained lost momentum.[42]

It was immediately apparent that such vital issues as Fickert's political chastity and civic rectitude would be largely ignored. In fact, these factors were eliminated at the start and other more "paramount" principles substituted. The hysteria of the war supplied the popular emotional note, and "Patriotism versus Anarchy" became the transcendent issue of the campaign. The following

[40] *San Francisco Examiner*, July 22, 1917.
[41] Baines *v.* Zemansky, 176 Cal. 369. See also *below*, pp. 337-338.
[42] Fickert *v.* Zemansky, 176 Cal. 443.

excerpts from a half-page advertisement placed in the *Examiner* by the Fickert organization conveys the nature of his defense: [43]

LEST WE FORGET

. . . A clean cut issue of Americanism. . . . The recall election of C. M. Fickert had its origin in the bomb outrage of Preparedness Day. . . . Ex-President Roosevelt clearly expressed the viewpoint of the Nation when he stated that the issue in the proposed recall is that of

PATRIOTISM AND ANARCHY

The character and ability of C. M. Fickert is not the issue. . . . Register your rebuke, you men and women of San Francisco, at this unwarranted and unnecessary recall.

VOTE FOR FICKERT

That stalwart molder of intelligent opinion, the *San Francisco Chronicle,* was in thorough agreement with these sentiments and exerted its influence accordingly. "Shall San Francisco be known as nothing but a den of anarchists?" [44] was the editorial wail. "If the recall should succeed the country would call it a defense of anarchy." [45] And, in its final exhortation, "The election tomorrow will not determine whether an official is satisfactory, but whether San Francisco favors anarchy." [46]

So menacing was the outlook that Ex-President Roosevelt came charging to the rescue with bombastic assertions that were seized upon frantically by the horrified patriots of San Francisco. "There is no question," averred the *Chronicle,* "that former President Roosevelt has concentrated the attention of the nation on the pending recall

[43] *San Francisco Examiner,* December 15, 1917.
[44] *San Francisco Chronicle,* December 6, 1917.
[45] *Ibid.,* December 5, 1917.
[46] *Ibid.,* December 17, 1917.

election in this city or that he has convinced the people of the East that the recall of Fickert would signify the approval by the people of San Francisco of bomb throwing and anarchy in the interests of anarchy. . . . If we recall Fickert it will be universally believed that the people of San Francisco sympathize with anarchy. . . . How such a verdict by an impartial people will affect the fortunes of this city must be evident to all. No one with anything to lose will come to this city to start a business any more than he would go to Petrograd." [47]

San Francisco went to the polls *en masse* on December 18, 1917, and the trend toward Petrograd was definitely halted. Fickert polled 46,451 votes, Sweigert 20,394, Haynes 1,721.[48] The twenty thousand "anarchists" who voted for Sweigert were composed principally of the laboring class and gave their candidate four districts by narrow margins. Two subsidiary influences seem to have contributed to the impressively large vote. Fickert's reputed affinity with the cohorts of the tenderloin was said to have stood him in good stead. Another more plausible factor was the bombing of Governor Stephens' mansion at Sacramento the day before the election. How terrific this attempted blowing-up must have been is clearly shown by the fact that the governor did not even waken when the bomb went off; but the incident stirred many citizens who would not otherwise have voted. The one-sided nature of the vote was explained by Secretary E. A. Wolcott of the Commonwealth Club in the *National Municipal Review*: "About two weeks before the election there came a decided swing of public opinion in his (Fickert's) favor, not as a good official, but as embodying a more important principle. The feeling that the recall movement was due above everything else to the resentment of

[47] *San Francisco Chronicle*, December 12, 1917.

[48] Fickert was subsequently defeated for reëlection in a campaign in which the Mooney case figured prominently.

the radical elements against any prosecution of dynamiters brought the sober second thought of the community to his rescue." [49]

There has been no more striking illustration of the effective and useful possibilities of the recall than its employment in San Francisco in 1921 to drive from office two corrupt municipal judges, John Sullivan and Morris Oppenheim. So clearly apparent was the justification for its use in this instance that many conservative leaders who were hostile to the principle of the recall joined in the promotion of the movement.

For some years it had been becoming increasingly evident to citizens who studied the situation with real concern that the source of local political corruption could be traced to the police courts. As early as 1917 the State Law Enforcement League, recognizing that the situation in the police courts had to be met before real progress could be made, had promoted a futile attempt to secure an investigation of Sullivan's conduct by the grand jury. At that time, however, the underworld and certain reactionary individuals who moved in more respectable circles succeeded in thwarting the project.

Rumors of impossible conditions in the police courts had continued to increase in seriousness until in 1920 a new grand jury was empaneled which was the first in years to contain "a majority of members who were desirous of making something of it other than a whitewashing agency." [50] They proceeded to investigate police court conditions with startling results. It was found that a few prominent bail bond brokers and a small group of attorneys were maintaining a corrupt and vicious control of the police courts. It was a general practice for criminals released on bail furnished by certain brokers to fail

[49] *National Municipal Review*, Vol. VII, p. 224 (March, 1918).
[50] Paul Eliel, "Corrupt Judges Recalled in San Francisco," *National Municipal Review*, Vol. X, p. 316 (June, 1921).

to appear for trial. Later the criminal would be declared a fugitive from justice and the bail, instead of being forfeited to the city, would be exonerated and returned to the broker. The records showed that certain attorneys had ninety-five per cent. of their cases dismissed and that police court fines for misdemeanors averaged only fifty cents.[51]

The grand jury returned indictments against the most notorious bail bond broker and one of the judges of the police court. No indictment was returned against the second judge, although a true bill had been found, because a member of the grand jury had been won over to his side on the night that the indictment was expected to be returned. When the cases were brought to trial, however, the evidence was so largely circumstantial that the broker was acquitted, and on the advice of the attorney general who was instructed by the governor to prosecute the cases, the indictment against the judge was dismissed.[52]

Meanwhile the San Francisco Bar Association held an exhaustive investigation of the conduct of Judges Sullivan and Oppenheim and recommended to the supreme court that they be disbarred. Following this the Civic League of Improvement Clubs, which had conducted an investigation of its own, with the coöperation of the Bar Association launched recall proceedings against the two judges.[53]

One of the hardest fought political campaigns in the history of San Francisco followed. Organized vice and corruption, realizing the impending curtailment of lucrative conditions if the recall was successful, fought as a unit. The labor organizations opposed the recall because the two judges had always been very friendly toward per-

[51] *San Francisco Chronicle*, February 24, 1921.
[52] Paul Eliel, *op. cit.*
[53] *San Francisco Chronicle*, March 1, 1921.

sons arrested in labor disputes and because of their belief that the corporation interests were behind the recall movement for the destruction of the local labor cause and the placing of "more pliant servants on the bench." Working for the recall were the Bar Association, the Civic League of Improvement Clubs, numerous women's organizations, and the majority of the newspapers. The final appeal of the presidents of the Bar Association and the Civic League called upon "every man and woman of San Francisco who is opposed to corrupt and vicious control of our Police Courts" to go to the polls on March 1 and "purge San Francisco of the disgraceful condition which now exists at the Hall of Justice."

The election was closely contested but Sullivan and Oppenheim were removed from office. The heavy total of 84,503 ballots cast was a surprise to all parties in the election. The vote stood:

Sullivan	37,852	Oppenheim	37,099
Lazarus	41,221	Jacks	41,919

OAKLAND

The recall in Oakland seems to have become a part of the established political technique. Petitions make their appearance every few months; but partly because of the forty-day time limit for their circulation,[54] only the most smoothly promoted survive. Once in two years, on an average, a petition progresses to the dignified stage of certification by the city clerk. The fact that no recall election has ever resulted in the removal of a public official does not seem to have dampened the enthusiasm for its use.

1. Oakland had no sooner adopted its recall provision than an opportunity presented itself to give it trial. This first recall revolved around Mayor Frank K. Mott and

[54] *Above*, p. 67.

two commissioners, William J. Baccus and Fred J. Turner. It seems that certain people affiliated with the I. W. W. and the Socialist party were denied the privilege of haranguing on the Oakland streets by the mayor and his allies because of the subversive nature of the speeches which they gave. The former took it to heart and started a recall in March, 1912. The election was held August 5, 1912, and resulted in an overwhelming defeat of the Socialists and the "bindle stiffs" while Mott, Turner, and Baccus were fully vindicated in their stand for law and order.

The San Francisco press played up the affair as strictly a life and death battle between anarchy and law, sounding the emotional chord in such headlines as, "I. W. W. Beaten by Rally of Good Citizens." One newspaper story illustrates the strain under which the citizenry struggled. "One prominent business woman of Oakland was an ardent supporter of Mott. Coming downtown yesterday what was her horror to find a small red flag planted on the edge of the sidewalk directly in front of her place of business. Without any comment she gently but firmly tore down the flag, walked down the street several doors away and deposited the crumpled remains in the gutter, resolved that no gathering of anarchists should insult her door." She later found that the little red flag was a precinct marker but she maintained that the sentiment behind her action had been the proper one.[55]

2. The next attempt to promote a recall in Oakland was made in August, 1915, when a petition was filed demanding the removal of Commissioners Anderson and Baccus. They were charged with having "awarded contracts to other than the lowest responsible bidder," with having "appropriated city funds in payment of illegal claims," and with being "interested directly and indirectly in the sale of articles and supplies to the city."

[55] *San Francisco Call*, August 6, 1912.

The petition proved insufficient and the charges of malfeasance were not well enough grounded to secure the additional signatures required for the calling of an election.

At this point there came upon the scene a picturesque political figure around whom the politics of Oakland still revolve—Mayor Davie, who at the age of seventy-six was elected in 1927 for a fourth consecutive term in office. Mayor Davie has been the storm center of more than one recall campaign, but thus far the opposition has made little headway against his hold on the public. His opponents accuse him of playing to the gallery and of pretending to play a lone hand against the corporations in order to gratify the proletariat. Whether this is true or not, Mayor Davie has ably demonstrated his ability to confound his enemies and maintain a contented constituency.

3. The first recall attack against Mayor Davie was launched in March, 1916, when the jitney-bus people circulated a petition against him, and Commissioners Edwards, Baccus and Anderson. This was done because they had passed an ordinance which prohibited "jitneys" from the business district where congestion existed. This seems to have been the only ground for the recall. It was criticized by the newspapers as an illegitimate use of the recall and the whole movement collapsed in April.[56]

4. Later in the same year a petition was filed for the recall of Commissioner F. F. Jackson. The charges indicated that the redoubtable mayor was again involved:

> He was elected with Mayor Davie and Commissioner Edwards to bring about certain municipal reforms. At the first opportunity, he deserted them. . . .
>
> His first act was to place a relative in a high and important station, knowing the relative to be wholly unfit in point of learning and ability for the place . . . necessitating the ex-

[56] F. S. Fitzpatrick, "Some Recent Uses of the Recall," *National Municipal Review*, July, 1916.

penditure by the City of large sums of money to engage an efficient man to perform the services his relative ought to perform. . . .

He . . . loses no opportunity to juggle the funds of the City for his own political aggrandisement; and suffers gambling and prostitution to be carried on openly in defiance of law.

He is a political mountebank occupying a dangerous position for the public.

In his reply, Jackson maintained that he had never and would never "submit to the dictation of any man or clique of men"; that while he had made his campaign entirely independent of Davie, he had "never voted against any ordinance introduced by him"; that the relative referred to was appointed to his position by the head of his department and the appointment confirmed by the council. The charges that he had "juggled funds" and "suffered gambling and prostitution to be carried on," he declared to be "wilfully and maliciously false."

The movement was commonly explained as a factional fight to maintain a Davie majority in the council, but Davie's enemies have gone so far as to suggest that Davie himself was behind the movement because he preferred the advantages offered by a combative minority position in appealing to the public for support.

The contest was close but Jackson was sustained in the special election of August 1, 1916, by a narrow margin of 13,626 to 13,282.

5. The next episode in Mayor Davie's recall history begins later in 1916 when the City and County Taxpayers' League of Oakland banded itself together for the purpose, among others, of securing the recall of the mayor. On January 25, 1917, Mr. E. L. Arnest, president of the League, filed a declaration of intention to institute recall proceedings. After several attempts to complete the petition failed because of the time limit, a

petition containing 6,707 names was actually filed September 7, 1917. The charges were substantially as follows:

IT IS APPARENT THAT:

He is absolutely incompetent both in training and ability to fill the office.

He insults citizens who appear on city business before the Council, and his actions are making Oakland appear ridiculous.

His gross demeanor and injustice are causing irreparable injury to Oakland.

His control for two years more is too grave a menace to tolerate.

He tears down industry.

He has no constructive ideas.

He talks much but accomplishes nothing.

He talks lower taxes but does nothing to secure them.

He preaches economy but practices extravagance such as securing a $3,000 automobile, a $1,500 job for his son to drive it; an $85.00 chair.

He keeps Oakland in constant turmoil.

His appointed political adviser, Civil Service Commissioner George Kaufman, indicates a desire to create a political machine in the Civil Service.

He ignores petitions to protect health conditions.

He promised to remove Chief Peterson and now is his booster.

WHY?

Oakland cannot stand two years more of Davieism.

A Recall is the only possible remedy.

Davie waxed jocose when he heard these pretentious charges and announced "On with the recall, let joy be unconfined. This will give me an opportunity to fill the auditorium and place before the people some other little matters that should be given the limelight."

At the election held December 4, Mayor Davie walked away with the honors by a vote of 23,176 to 9,169 against

the recall. He hailed it as a distinct victory for the people and a defeat of the special interests.

Incidental to these proceedings, there was organized the "Anti-Recall League of Oakland" for the purpose of stamping disapproval on unmerited recalls. The League was not formed with the primary purpose of defeating this recall, but to oppose all recalls "unless it can be conclusively shown that the official under consideration has actually committed some disgraceful or criminal act."

6. The Anti-Recall League apparently functioned effectively for a time, for Oakland now experienced a three-year recall holiday. But in 1920, a recall movement developed which showed that even the third city in size in the state could get as excited and upset, and act as provincially as those small towns which cherish recall politics as a most exciting game.

If the charges in the petition were even partially true, they indicated an iniquitous state of affairs in Oakland city politics sadly in need of correction. Commissioners Morse, Sodeberg and Edwards were charged generally with petty political bickering, with fomenting squabbles in the council, and with undermining the civil service. Edwards was accused of attempting to excuse high taxes by pointing to the loss of the saloon and business tax, of conniving while *ex-officio* member of the school board to have Sodeberg manage the expenditure of the five million dollar school building fund voted by the people, of selling his independence to Sodeberg for the patronage of the city clerk, and of having the city attorney defend him when facing criminal charges and prosecute other officials not in his combination. The indictment concluded with the accusation that "He has stood staunchly for Edwards first, his political lieutenant second, at Oakland's cost."

Sodeberg was charged with hampering Oakland's industrial development, with insulting liberty bond saleswomen, with antagonizing war workers, and with refusing

patriotic demonstrations. The arraignment closed with the following peroration: "Before Oakland can advance as a manufacturing center Sodeberg and his colleagues, Edwards and Morse, must be given to understand, and the country at large must know, that there are red-blooded citizens in Oakland to improve our city government."

The three assailed officials professed absolute innocence of the charges, and in their formal replies insinuated that the underworld was fostering the movement. Morse inquired suggestively:

> Shall I be recalled so that Peterson may be put back as Chief of Police?
>
> Shall Oakland again be the headquarters and pay off station for bunco men and gamblers as under the Peterson régime?
>
> Why should vice interests be willing to hire tools to file recall charges and then hire solicitors at high wages in order to save Peterson his small salary?
>
> How would they get this money back?

Edwards issued somewhat similar warnings:

> Do not sign this recall petition; it is false and malicious.
>
> The person asking you to sign is paid to secure your signature.
>
> It will cost the taxpayers $45,000 for a recall election.
>
> The vice interests are spending thousands to secure control of our city government.

Sodeberg, as did Edwards, pointed to his achievements during his term and declared that, contrary to the assertions of his opponents, he bought liberty bonds of every issue.

The city clerk was deluged with protests against the recall. The Building Trades Council, the Metal Trades Council, the Railroad Brotherhoods and the Central Labor Council denounced it because "it seems to be initiated by a certain party's personal spite, or in other

words, as a rebuke to the commissioners for the discharge of Walter J. Peterson, Captain of Detectives." The Oakland Real Estate Board opposed the movement because the Democratic national convention was being held at San Francisco and "it will serve ill the fair name of Oakland if these delegates return to their eastern homes with an impression of this city as seen in the throes of a bitter recall campaign with its incidental and unavoidable publicity of municipal discord." The Order of Good Templars declared that the movement would "discredit the principles of direct legislation," and called upon the temperance forces in the city of Oakland to defeat the proposed recall. The merchants and business men protested against it because of the upheaval it would cause in the city.

Tax expert C. S. MacMullen was prevailed upon to examine the records and produced the damaging statistics that "only two of those seventy persons who were forcing a recall on the city contribute taxes on assessed property, and that forty-two cents will be the sum total the entire number contribute" toward recall election expenses of $40,000.

This devastating financial analysis produced the indignant retort from the war veterans connected with the movement that all the people in the city were taxpayers whether they paid taxes directly or not; that the "undersigned are ex-service men who tried to do their duty at a time when some of our city council were so sneeringly silent upon love of country as to disgrace the city of Oakland"; and that they resented "an attack upon the grounds that we pay no land taxes. If the people of Oakland and of the country at large had all displayed the same luke-warm patriotism that one Oakland commissioner did, there would be no United States today and no taxes to pay."

In the midst of this excitement the city clerk declared

the petition insufficient. The promoters complained that he had ruled out the names of 5,000 signers because in giving their residence they failed to specify the nearest cross streets; which, they were advised by four leading attorneys, was illegal. Since they failed to carry the question to the courts, however, the movement terminated automatically and the city was extricated from its embarrassing predicament.

7. The most recent series of episodes in the story of the recall in Oakland indicates that it has not yet been possible to bring recall technique to a sufficiently high degree of proficiency to offset the exacting requirements of the local charter provision.

Early in 1928 notice of intention to circulate a recall petition against Mayor Davie and Commissioners Parker and Young was filed by Mrs. May Samuels, President of the Central Oakland Improvement Club. The mayor and the two commissioners were accused of acting contrary to the city's interests by voting for the new business tax and for a later closing of dance halls.[57] It was said that the thwarted ambition of the leader of the movement to become a member of the police department had some influence in the instigation of the action, which collapsed shortly from lack of support.

In the meantime the anti-administration forces had been passing the hat until they had accumulated a sufficient fund to concentrate a formidable attack on one commissioner, C. C. Young. The conduct of the campaign was placed in the hands of one of the shrewdest campaign managers available, and this versatile gentleman set about organizing the attack on scientific principles. The first essential was the choice of an issue to be emphasized in the affidavit of intention and on the individual certificates. As Mrs. Samuels' selection of the business tax issue had not gone well, it was necessary to

[57] *Los Angeles Times*, February 18, 1928.

try some other lure; and Commissioner Young's position as head of the Department of Public Health and Safety suggested the most attractive possibility. He was charged, therefore, with gross mismanagement of his department. The petition declared, among other things, that he had imperiled the health of the community by inadequate food and market inspection, that he had demoralized the police department by "frequent and uncalled for shifting and reorganizations," and that he had created ill-feeling and dissension "by employing eavesdroppers and spies to stir up scandal against members of the city government."

This petition seems to have been put out as a "feeler" or trial balloon to ascertain popular sentiment and at the same time to secure preliminary publicity. It was followed shortly by another petition which went a step further in the matter of issues by accusing Young of responsibility for existing lawlessness and vice. The charges and Young's reply appear in the accompanying facsimile of the petition.

The campaign was organized on a businesslike basis. Verification deputies were given specific instructions and recall headquarters were placarded with warnings to be sure every signer read the reasons for and against the recall twice and complied with all the technicalities in affixing their signatures; and to remember that there were strict penalties for misrepresentation and forgery. As an inducement to secure efficient service from the solicitors, their commission was set at five cents per name with an additional five cents for each name that successfully passed the scrutiny of the city clerk.

The best efforts of the promoters fell 1,404 short of producing the requisite 8,518 signatures within the forty days; but the petition was filed in the hope that the fifteen days allowed for amending would produce the necessary results. The clerk allowed 4,608 of the certificates,

(INDIVIDUAL CERTIFICATE.)

Petition to the Council. Requiring a Special Municipal Election

FOR THE RECALL OF C. C. YOUNG
From the Office of Commissioner
of the City of Oakland, State of California

REASONS FOR THE RECALL OF C. C. YOUNG FROM OFFICE

1. That said C. C. Young lacks the proper integrity to hold the office of Commissioner in the City Government.
2. That opium dens are operating openly during the incumbency of said C. C. Young.
3. That during the incumbency of said C. C. Young the elements of vice-bootleging, gambling and prostitution are rampant and in full operation in this City; making strongly visible the ear marks of protection.
4. That said C. C. Young is using the Police Courts for the purpose of raising revenue from protected vice dens.
5. That his advisers and appointees do not possess the proper moral qualifications for holding public office.
6. That he is interested in establishments having contractual relations with the city, in violation of law.
7. That said C. C. Young hinders and interferes with the Police Department in the enforcement of the law, and that he prevents the effective enforcement of the laws.
8. That Chinese Lotteries are operating and Fan Tan games are running for the first time in seven years in Oakland.
9. That he discriminates against war veterans in making appointments.
10. That his mask will no longer deceive.

REASONS AGAINST THE RECALL OF C. C. YOUNG FROM OFFICE

Each and every accusation contained in the affidavit of A. R. Hartsock is unfounded and untrue.

Inasmuch, as this is the third recall petition filed against me within twenty-five days, and that A. R. Hartsock, the proponent of this recall, is a verification deputy on the first recall petition instituted by one Dubovsky, it is evident that there is a preconceived conspiracy to harass and hinder me in the performance of my duties as a Commissioner of the City of Oakland.

I challenge the good faith of the proponent. If he had a sincere desire to submit the issue of the administration of my office to the people of Oakland, he could support either one of the previous petitions.

I, the undersigned, certify that I hereby join in a petition to the Council requiring that it forthwith submit, as provided in the Charter of Oakland, to the vote of the electors of the City of Oakland, at a Special Municipal Election, the question whether C. C. Young shall be recalled from the office of Commissioner of the City of Oakland, State of California.

I further certify: that I have read the above reasons for and against the recall of said officer and believe that C. C. Young should be recalled; that I am a qualified elector of the City of Oakland, State of California; that I am not at this time a signer of any other like certificate; that I reside at

No._____ Street, between_____ Street and_____

Street, in said City, and that my occupation is_____

(Signed)_____

STATE OF CALIFORNIA, }
COUNTY OF ALAMEDA, } ss.
CITY OF OAKLAND. }

_____, being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)_____

Subscribed and sworn to before me this_____ day of_____, 1928.

(Signed)_____
Verification Deputy (or Notary Public)

The petition of which this certificate forms a part, shall, if found insufficient, be returned to A. R. Hartsock, at No. 3839 Forest Hill avenue, Oakland, California.

and upon protest restored 947 of those which he had discarded, making in all 5,555 valid names. Meanwhile 1,244 of the signers had exercised the prerogative provided for in the charter [58] of changing their minds, leaving a net total of only 4,311 good certificates.

The amended petition submitted contained 5,303 certificates; but necessary haste nullified previous precautions and the clerk accepted but 3,058 as valid. This left the petition 1,146 signatures short of the number required for calling the election.

The sponsors of the recall immediately brought suit to compel City Clerk Frank C. Merritt to certify to the sufficiency of the petition and October 23 the district court of appeals, in a unanimous decision, termed the action of Merritt in throwing out signatures "wrongful and arbitrary" and ordered the holding of an election.

The election was finally held December 19 and Young was sustained in office by an overwhelming majority of 20,621 to 8,545. Fewer than 30,000 out of a total registration of 146,370 were sufficiently interested in the movement to vote.

[58] *Above,* p. 68.

CHAPTER VIII

THE RECALL OF STATE, COUNTY, AND IRRIGATION DISTRICT OFFICERS

The recall, although the preponderance of its use has been in the municipalities of California, has not gone untried in the other political subdivisions of the state. It has been employed in counties, judicial townships, and irrigation districts on more than fifty different occasions. Its potentialities as a method of summary removal of state officials, however, remain largely undeveloped. No attempt has ever been made to recall an official of the state elected at large, and since three arresting recall movements against state senators in 1913-14 there has been no serious attempt to recall a state officer.

The Recall of Senator Marshall Black.—The first use of the recall in California against a state official resulted in the removal from office of Senator Marshall Black of the twenty-eighth senatorial district in 1913. Senator Black, a progressive from the university town of Palo Alto, was much trusted and admired by the community. In the latter part of 1912, however, the sudden crash of the Palo Alto Building and Loan Association, of which he was treasurer, brought Black under suspicion and led to his arrest. The investigation conducted by the authorities revealed defalcations of large sums. Later Black pleaded guilty at his trial and received a sentence of ten years in the state penitentiary.[1]

Held under arrest while accountants made a survey of the defunct association's records, Black was urged to

[1] *San Francisco Call*, October 8, 12, 22, 1912.

resign his senatorial position, but obstinately refused to do so. Thereupon the county Republican committee began proceedings, under the leadership of Prof. R. L. Green of Stanford University, to effect Black's recall. A petition was filed October 29 containing 1,600 signatures or three hundred more than necessary for the calling of an election. It is worthy of note that the petition bore the signatures of professors from three seats of higher learning, namely, Stanford and Santa Clara Universities and the College of the Pacific. Herbert C. Jones was selected to run against Black and the election was set for January 2, 1913, timed so as to exclude him from the impending session of the legislature. The election resulted in the overwhelming elimination of Black and the election of Jones by a three-to-one vote over his opponent, W. H. Kelley.[1]

Senator Owens.—Organized labor sought, after the session of the state legislature of 1913, to test the effectiveness of the recall against an unfaithful legislator who fails to live up to preëlection promises and platform pledges. Senator James C. Owens, who had previously, as a councilman of Richmond, survived a recall election, was the object of their displeasure. A recall movement against him was invoked by the State Federation of Labor and by the Labor Councils and Building Trades Councils of the two counties of Contra Costa and Marin, which comprised the district, on the ground that he had deliberately violated almost every pledge made to labor before the election and had in addition entirely disregarded many pledges of the Democratic state platform upon which he had been elected.

The evidence that the senator was guilty of having violated campaign pledges was unquestionable. Prior to his election he had made certain specific promises in writing to the labor group. These included expressions

[1] *San Francisco Call*, October 14, 29, 1912, January 3, 1913.

PETITION FOR RECALL OF SENATOR JAMES C. OWENS

COUNTY OF_____STATE OF CALIFORNIA

TO THE SECRETARY OF STATE OF THE
STATE OF CALIFORNIA:

The undersigned, electors of the State of California, hereby petition for the recall of Senator James C. Owens, of the Ninth Senatorial District, and demand an election of a successor to the office named herein, and in compliance with the provision of Article 23 of the Constitution of the State of California, a general statement of the grounds on which the removal is sought is herewith submitted:

Senator Owens repeatedly violated his pledges as a Democrat; broke his written promises to Labor; and assisted Big Business at crucial moments by his vote or by staying away.

His party platform favored a State industrial insurance system. He fathered an amendment to Boynton's Workmen's Compensation Bill that would have made such insurance an impossibility; just what insurance companies wanted.

His party platform declared in favor of extending the Women's Eight-Hour law. In committee he voted for every proposition to limit its scope, even to exclude cotton mill employees already included in the law. Stayed away on final passage.

He voted against the Water Conservation Bill, to assist the power companies.

He voted against mining inspection, and against improving working conditions and hours in mines, to please mining corporations.

He introduced Senate Bill 243, which was so bad that the Railroad Commission said officially it should have been entitled: "An Act to Repeal the most important provisions of the Public Utilities Act, respecting railroads."

The last two days he dodged or was absent on 113 roll calls.

The above are but a few of many reasons why Senator Owens should be recalled.

	NAME	Street and Number	City or Town of Aforesaid County	No. of Election Precinct
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
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16				
17				
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19				

favoring the strengthening of the women's eight-hour law; the better enforcement of all labor law, particularly the child labor law; the curbing of the use of injunctions in labor disputes; and the establishment of compulsory compensation together with a state insurance system to indemnify employees against accidental injuries or death. The record of his vote in the legislature on nineteen representative measures advocated and supported by labor shows that he voted favorably on none, voted against nine, and was absent from the roll-calls on the remaining ten.[3] The reactionary nature of his legislative activities was brought out in the specific charges embodied in the petition for his recall, a facsimile of which is presented above.

When the labor group began their campaign against Senator Owens, every person who had gone to Sacramento the previous winter with an interest in progressive measures and decent government agreed that labor had attacked one of the weakest and most recalcitrant members of either house. They held that Owens had voted consistently against every bill in the interest of the general public when the public's interests conflicted in the slightest degree with those of the Standard Oil Company, the railroads, and other big interests having large properties at Richmond.[4]

The alignment of forces in the recall campaign was conclusive proof that labor planks in a party platform are not always to be taken too seriously, for the Democratic party organization stood sponsor for Owens again in the recall election. Several of the local Republican bosses joined the Democratic ranks as active workers for Owens, and the voters in the farming districts and grape-growing section rallied to his support. The columns of

[3] Franklin Hichborn, *Story of the California Legislature of 1913*, Appendix, Table V.

[4] Files of the *San Francisco Bulletin*.

the daily and weekly press, practically without exception, were closed to the proponents of the recall; and in many instances the papers stopped at nothing in their misrepresentation of the movement. Many sincere and well-meaning voters supported Owens because they had been led to believe that the liquor interests and the "dive-keepers" of San Francisco were behind labor in the fight for Owens' removal.

The results of the election revealed the extent to which the movement was a skirmish between organized labor and the reactionary political and economic forces. In every city and town where the organized workers had any foothold Owens was recalled. Richmond, his home town, repudiated him by a majority of 751 votes. But the vote of the entire district retained him in office by a safe margin of 6,749 to 5,177.

Senator Grant.—The final episode in the brief history of the recall of state officers in California was the recall of a state senator who failed to represent his constituency.

The story constitutes one of the many colorful incidents of the progressive movement. Senator "Eddie" Wolfe, leading reactionary in the senate for twenty-five years, was a troublesome opponent of reform in the legislature of 1911, and Governor Johnson was anxious to get rid of him. Wolfe's district, the nineteenth, included the tenderloin district of San Francisco. Johnson's candidate in the Republican primaries of 1912 failed to make use of a devastating exposé of Wolfe which had been prepared by the Johnson interests, and was defeated by five hundred votes. A little country chap by the name of E. E. Grant, the son of a Methodist minister, was nominated in the Democratic primaries and Johnson gave the word to back him. On the strength of Johnson's support and the exposé of Wolfe, Grant won by 95 votes.

In the 1913 legislature Grant, who had all the instincts

of a reformer, took an aggressive stand against vice conditions. His most notable work was the introduction and support of the Redlight Abatement Act, a measure providing machinery by which a citizen may proceed against the owner of a house of prostitution and close the building as a nuisance.[5] Leading members of Grant's constituency warned him that he would be ruined politically unless he accepted certain qualifying amendments; but this he refused to do. The bill passed, was held up nearly two years by a referendum petition containing hundreds of forged signatures, and was finally ratified by popular vote.

The subject of Grant's possible recall was discussed in the papers immediately following the adjournment of the legislature. But to recall a state senator for having opposed vice conditions did not seem possible even in San Francisco, and the papers which had opposed his election were equally hostile to his recall.

A recall petition was started, however, with one Andrew Einsfeldt, a cigar dealer, the visible head of the movement. He gave as his motives:—that Grant had actively supported the Redlight Abatement Act, that he was a prohibitionist, and that he had refused to collaborate with his colleagues on Sundays in concluding the work of the legislative session. Since it was hardly politic to emphasize Grant's campaign against vice as the reason for demanding his recall, the petition carried the somewhat different charges that he had voted to make the World's Fair "dry," that he had voted against a bill to prevent the solemnizing of marriages until at least five days after the issuance of the license, and that he had opposed a measure giving California authors and publishers preference in the publication of school books.[6]

[5] Franklin Hichborn, *Story of the California Legislature of 1913.*

[6] The full text of the petition is quoted in Franklin Hichborn, *Story of the California Legislature of 1915,* from which this account is largely taken.

A total of 2,334 signatures was needed, and early in September the promoters claimed that 3,000 had been secured. About this time the wholesale forgeries of the Redlight Abatement and other referendum petitions were exposed and a number of leading underworld characters of San Francisco seemed headed for the penitentiary. On September 11 the San Francisco papers carried the story that the Grant recall petition had been accidentally burned.

A second recall petition against Grant was circulated and finally filed on December 12. It was found to contain so many forged and irregular signatures that the San Francisco grand jury was prevailed on to take action. Indictments were voted against two of those alleged to be guilty of fraud in the circulation of the petition; but for some mysterious reason they were never brought to account. Approximately one-half of the 2,790 signatures were found to be invalid and the petition certified as insufficient.

With zeal worthy of a better cause Einsfeldt and his backers circulated a third petition for the recall of the crusading Grant. This time nearly 4,000 signatures were filed, of which 2,592, or 258 more than the number required to invoke the recall, were certified as valid. Grant was convinced that a number of these supposedly valid names had been irregularly signed, and sought relief in the courts. But the supreme court of the state sustained the action of the registrar in certifying to the sufficiency of the petition.

In the election campaign there was little concealment of the motives behind the movement. "No man," said the *Daily News*, "with any discernment can fail to know why the Tenderloin wants Grant's recall. It is all right when Grant or any other legislator fathers a law which strikes the unfortunate victims of vice. But when he fathers a law like the Redlight Abatement bill which

strikes *at the pockets of the rich men who own the vice houses* he at once—in their view—becomes a menace." [7] The proponents of the recall spared no expense to secure Grant's defeat. Billboard advertising was used extensively, and the dictrict was covered with enormous signs reading:

VOTE YES TO RECALL GRANT

He voted for prohibition.
He voted to make World's Fair dry.
He voted against home industry.

When the recall election was actually called, "Eddie" Wolfe emerged from behind the scenes and announced his candidacy for the succession. The following excerpt from *San Francisco Town Talk* represents the sentiments of his sponsors:

Wolfe was one of the ablest of standpat Senators a few years ago. Indeed he was regarded by many as the ablest man in the Senate, and now that the reaction has set in, and the standpatter is no longer abhorred as a vessel of iniquity, the probability is that Wolfe will win in a walk against Grant. For Grant is rapidly becoming an anachronism. He belongs to that august age of political purity that now seems so remote, the age of Hiram's heyday when the pillars of government were receiving a new coat of varnish. He spent most of his time at Sacramento reducing San Francisco's blood pressure. He was for making the Exposition wholesome by rendering it dry, and we have today as a monument of his genius and zeal for purity the Redlight bill by which he would abolish the oldest of professions. Senator Grant is an exotic flower that flourishes best in communities that are chemically pure.[8]

Of the 16,090 voters registered in the district fewer than 9,000 voted at the recall election, which was held October 8, 1914. The vote to recall Grant, on the face of

[7] Quoted in Franklin Hichborn, *op. cit.*, p. 80.
[8] Quoted in Franklin Hichborn, *op. cit.*, p. 87.

the returns, was, for his recall 4,672, against his recall 4,141.

Grant, still feeling that there had been sufficient irregularities in the recall petition to nullify the procedure, brought the whole matter before the senate under protest proceedings. The senate authorized the appointment of a committee to make full and complete investigation and provided a fund of $2,500 for the purpose. But by this time Grant was too seriously embarrassed financially to employ the detectives and attorneys necessary to present his case adequately before the committee. A rather superficial investigation resulted in a recommendation that Wolfe be given his seat.

From the point of view of political democracy the recall of Grant may be reasonably justified, for he undoubtedly failed to represent his constituency. The outcome of the recall, however, did not work out entirely to the advantage of its promoters; for Grant has devoted his life to fighting prostitution, and in San Francisco the segregated district was closed very largely as a result of his efforts.

THE RECALL OF COUNTY OFFICERS

The tenure of county and township officers in California has not been greatly disturbed by the use of the recall. This democratic method of dismissal from office has been employed, as far as can be ascertained, by only twelve of the fifty-eight counties of the state; and a total of but twenty-six recall petitions has been filed, nearly half of them in the counties of Fresno and Kern. Since, in every instance but one, the movement has been directed against a single officeholder, only twenty-seven officials have been involved in recall proceedings. Thirteen of these have been members of boards of supervisors, bodies which constitute the legislative and executive agencies of county government. The other fourteen officials have

been concerned with the administration of law—six of them county officers, one judge and five district attorneys, and eight of them township officials, five justices of the peace and three constables.

The subterfuges resorted to in many municipalities to avoid recall elections seem to have been largely overlooked by county officers under attack, and all but one of the twenty-four petitions certified as sufficient have resulted in the holding of elections. The electorate has been very conservative, however, in its use of the recall ballot, and but eight officials have been removed by this process,—two supervisors, three justices of the peace, two constables, and a district attorney.

The distribution of the use of the recall in counties over the years of its operation since 1911 has been fairly even except for the years 1924 and 1925, when it was employed on seven occasions. It is worthy of note that this temporary increase in its use is coincident with a similar broadening of recall activity in municipalities; and that the underlying causes were largely the same—the ascendancy of the Ku Klux Klan and the controversies arising from ambitious public improvement programs.

SUMMARY OF RECALL MOVEMENTS IN COUNTIES

Number of counties in California	58	*Number of Officials Involved*
Number of counties in which recall petitions filed	12	
Number of times petitions filed	26	27
Number of times petitions held insufficient	2	3
Number of times elections averted by litigation	1	1
Number of elections held	23	23
Number of recalls successful	8	8
Number of recalls failed	15	15

The county, in California, is an unusually important subdivision of government, both for the performance of state and of local functions. Its chief governmental activities relate to taxation, the administration of justice, education, charities, public health, public works such as roads and bridges, and the conduct of elections. County governments not only collect and disburse funds approximating the total amount expended by the state government; but they act as collecting agencies for certain state revenues, and in some instances perform the functions of assessment and collection of taxes for municipalities as well.

Only one of the fifty-eight counties, the consolidated city and county of San Francisco, is entirely urban in its jurisdiction. The county of Los Angeles, with its forty-four incorporated municipalities, comprises nearly forty per cent. of the population of the state. Alameda county has a population of approximately a half million. Only four other counties have populations exceeding 100,000 and over half the total number contain fewer than 25,000 inhabitants each. The great majority, therefore, are largely or entirely rural in their interests and territory. Many of them cover vast areas of irrigated ranch land, cattle country, mining region, and lifeless desert. Others lie obscurely in rugged mountain ranges and inter-mountain valleys. San Bernardino county has an area almost equal to that of the states of Massachusetts, Connecticut, and New Hampshire combined. The mountain counties of Mono and Alpine, with 960 and 243 inhabitants, are among the smallest in population in the United States.

The use of the recall in this class of political subdivisions has, with few exceptions, been restricted to rural or semi-rural counties, and therefore has developed over issues more or less peculiar to such areas.[9] It has been

[9] This is no reflection on the government of rural counties. If the citizens of large municipalities, while concentrating their attention on

impossible, in some cases, to secure adequate data from which to draw conclusions as to the causes and virtues of these recall activities. But on the whole, when environment is taken into account, the underlying influences have been much the same as those which have motivated recourse to the recall in the cities of the state—questions of efficient and honest administration, factional differences over matters of public policy, skirmishes for political control, and concern over the private morals of public officers. The Ku Klux Klan has made its diverting contribution to the story, and the hand of a grasping corporation has appeared occasionally behind the scenes; but in the main it has been local issues of seeming high moment, relating to matters of paramount economic, moral, or personal concern, that have roused these country constituencies to hasty political action. Their conduct in campaigns has usually been serious, forthright, and ingenuous, and affords another valuable sidelight on democracy functioning under emergency conditions.

COUNTY SUPERVISORS

Boards of supervisors in California are composed of five members elected from single-member supervisorial districts. They constitute the legislative branch, and, to the extent that counties with their jumbled array of independent offices can be said to have such, the executive branch of county governments. Serving for four-year terms and exercising legislative and executive functions of great importance to the community, they receive more critical attention than any other class of county officers with the possible exception of district attorneys. In seventeen years of recall history thirteen attempts have been made to recall supervisors. Two of them

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city government, could also find time to scrutinize the activities of the officials of the counties within which they reside, the story might be a different one.

never came to an election, in two instances the official was recalled, and on nine occasions the officials were sustained in office.

Two Petitions That Failed.—The two movements that failed to come to a vote both occurred in 1915. One of these was directed against Supervisor Kelly of Alameda county and terminated in a struggle over the petition. In October a petition containing 300 names was filed with the county clerk. Since 3,685 signatures were necessary to call an election, it was patently insufficient. During the ten days allowed for supplementing the petition the instigators of the recall hustled feverishly for the more than 3,000 necessary signatures, while Kelly brought charges of fraud against the circulators.

The day following the arrest of two of the paid solicitors, sixty-five men and women requested the clerk to remove their names from the petition, claiming they thought they were signing a protest against the new courthouse site. (Kelly's vote on this issue was one of the causes of the recall.) The recall faction denied the charges of fraud and asserted that several of their solicitors had been subsidized by Kelly to obtain spurious signatures in order to discredit the petition. To prevent Kelly from influencing the wholesale withdrawal of signatures, the petitioners waited until the last minute and then filed 4,400 supplemental names. Whereupon the clerk brought the heated controversy to a close by declaring the petition insufficient because of various irregularities.[10]

The second of the two abortive attempts at securing an election for the recall of a supervisor took place in Del Norte county in the northernmost corner of the state. Supervisor John H. Laam was threatened with recall on the grave charges that he "had wilfully and

[10] F. S. Fitzpatrick, "Some Recent Uses of the Recall," *National Municipal Review*, Vol. V, pp. 380-381, July, 1916.

fraudulently voted for the allowance of a $408.33 claim which the District Attorney had advised the Board was illegal, that he had commercialized the office and in the employment of labor on the highways had given preference to electors who favored his own political convictions, and that he had little or no knowledge of the practical engineering or construction of public highways and by reason thereof was extravagant and wasteful of highway funds."

Laam took the matter to court on such grounds as the falsity of the charges, the improper form of the petition, and the right of signers to withdraw their names, and the movement terminated in litigation.[11]

Two Recalls That Succeeded.—Supervisor William S. Godfrey of Solano county was recalled in a special election of February 10, 1914, by the decisive vote of 803 to 426. The reasons for the recall as given on the petition were as follows:

1. Inattention to his duties.
2. Unbusinesslike method of conducting the office.
3. General unfitness for so important a public trust.

Supervisor Charles Wells of Fresno county fell a victim to the recall in 1920 largely because he could not please his entire constituency. The vote was 2,044 to 1,879. It was charged, among other things:

That he did attempt to deceive the Coalinga District into believing that they were to receive a just proportion of the road construction from the $4,800,000 bond issue when at the same time he knew that their allotment had been fixed at two and one-half miles.

That he has and is using his power as Supervisor in connection with the distribution of road money with a view to strengthening his political position and not with a view to an equitable distribution of such funds.

[11] Laam *v.* MacLaren, 28 Cal. App. 632.

It was actually a case of conflicting interests within a large district, and the movement was successful because there were more votes in the isolated part of his district located at Coalinga than there were in his own home town.

Elections That Failed.—Whatever may have been the merits of nine attempts to recall supervisors, they failed through lack of support at the polls. One case involved the charge of incompetency, a second the question of whether the incumbent had been fairly elected, a third a controversy over the Klan. The other six may be said to have concerned themselves with matters of public policy, with sundry complications. Possibly one or two of the number deserved success, but more were a gross misuse of the recall.

1. The first attempt to recall a county officer had its origin in a controversy over law enforcement. Supervisor J. Harry Weise of Sonoma county was threatened with recall in 1913 on the grounds that he had been too generous in the granting of liquor licenses and had failed to uphold the anti-road house ordinance. Weise and his liberal friends held the upper hand and he remained in office.

2. Supervisor John C. Akin of El Dorado county was assailed with a recall petition in January, 1915. The petition was declared insufficient, but his opponents were persistent and one month later filed a second petition which resulted in an election.

With the usual terseness of the mountain folk, Akin was charged with "incompetency and mismanagement in said public office and official affairs of said public office, to wit.: Supervisor of Third Supervisorial District."

Although he was retained in office by a vote of 360 to 279, it was not that the movement was without justification, but because many voters felt "that he should be left in office until the next general election, so why not let

him serve his term." Akin has run for office twice since and was badly defeated both times.

3. The background for the attempted recall of Supervisor J. B. McFarland of Kern county in 1925 was a disagreement over the question of whether he had been fairly elected. Through some mistake Spengler—McFarland's rival for the office—failed to get into the primaries. Spengler's friends used "stickers" instead of writing in his name on the ballots and he won by a vote of 829 to 750. When this method of election was ruled against by the supreme court, the recall movement was started on the ground that Spengler, rather than McFarland, was the real choice of the people.

McFarland raised the cry that the vested interests and the political gang were the instigators of the attack. "Prominent in this campaign," he declared, "is an oil-field superintendent, linked up with a former Bakersfield official. The superintendent is vicious in his enmity because he was not permitted a free hand to destroy highways constructed at county taxpayers' expense. The ex-official, successful in life as a 'public pap-sucker,' openly boasts that he will become county purchasing agent if the recall is successful."

For some reason the public failed to reiterate its preference for Spengler, and McFarland was retained in office by a vote of 772 to 680.

4. The Ku Klux Klan made its appearance in county recall history in 1922 when the anti-Klan faction of the fourth district of Kern county essayed to use the recall as a weapon against Klan political control. Supervisor Stanley Abel was the object of attack, the sole grievance against him appearing to have been his membership in the Klan. Neither Abel nor his opponents minced words in the arguments they placed on the sample ballots, so no further comment is necessary than to quote them ver-

batim. The reasons given for the recall of Abel were as follows:

That the said Stanley Abel is a member of an organization known as the Ku Klux Klan, which organization has perpetrated outrages in the County of Kern, which clearly indicate open defiance and total disregard of the laws of our State and country on the part of such Organization;

That said Ku Klux Klan has by its activities demonstrated that its purposes are opposed to, and inconsistent with, the institutions of our Government and subversive of the principles upon which our Government is founded;

That said Organization has forcibly imprisoned, tried, convicted, and atrociously and inhumanly punished numerous persons, citizens of the United States;

That said Stanley Abel has stated in the public press his allegiance to the Ku Klux Klan and its activities, thereby voicing his belief that said Organization, self-styled, the "Invisible Empire" is paramount in its wisdom and authority to the laws of our country and procedure of our courts.

The reasons advanced by Stanley Abel for his policy in office:

Under the provisions of law an official whose recall is sought for alleged misconduct in office is allowed 200 words to justify his conduct. No charges whatsoever have been made concerning my conduct in office, and it must therefore be presumed that that conduct has been above serious criticism.

The bootleggers and their friends and sympathizers have taken up a subject entirely foreign to the conduct of my office and are attempting by means of vicious and lying propaganda spread by certain corrupt newspapers to inflame the public mind as to the true issue.

The bootleggers by unanimously signing the recall petition have made the issue of the coming election.

When I took the public office I now hold I took the following oath of office, "I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the

State of California, and I will faithfully discharge the duties of Supervisor according to the best of my ability so help me God." I defy anyone to truthfully say that I have been unfaithful to that obligation, or to point out any official act which justifies the recall.

STANLEY ABEL.

It was a campaign not so much to recall Abel, as to recall the Klan. It was bitterly fought and closely contested, but the "Knights of the Nightshirted Order" prevailed and Abel retained his office by a vote of 1,902 to 1,799. No better evidence of the interest aroused is needed than a comparison of the total vote of 3,701 with that of 2,641 cast at the general election of 1920 in which Abel was elected. It is also interesting to note that only 33 votes were cast in opposition to Abel at that time.

5. The following year certain interests tried to recall R. H. Norton from the board of supervisors of Los Angeles county because he was an "obstructionist." The movement was really a successful rear-guard action of the receding progressive movement. Norton had long been an ardent, and somewhat blunt, supporter of such progressive measures as the initiative, referendum, recall, civil service reform, and municipal ownership. As a member of the board of supervisors he had rendered himself obnoxious to the political machine by his vigor in blocking designs upon the public treasury and by his strong support of the merit system in the county civil service.[13] The recall petition was circulated and held over Norton's head for six months as a warning, but with no effect.

A committee appointed by the Municipal League, the leading civic organization of Los Angeles, to investigate the merits of the movement, reported, "That after such investigation as they have been able to make as to the conduct and acts of Mr. R. H. Norton as Supervisor of

[13] *Equity*, July, 1914; *Los Angeles Express*, May 4, 1914.

this County, this Committee is of the opinion that the proceedings for his recall are not justified." [18]

The election was held May 5 and Norton was victorious by a vote of 10,478 to 4,710.

6 & 7. Two recalls against supervisors that materialized in 1919 proved to be futile and largely uncalled-for attacks by disgruntled minorities. Calumnious trivialities gave plausibility to the petitions; but the masterful rebuttals that appeared on the sample ballots were disconcerting in their pointed analysis to the recallers.

Supervisor H. C. Rambo's political enemies in the third district of Kern county, in engineering a recall against him, made the following sweeping charges.

He has used his office for the purpose of private gain.

He has violated the law in using his office for the pecuniary benefit of his business associates.

He has used county property in and out of the County of Kern for his individual benefit.

He has used the automobile provided for official business for his own private business, and for pleasure trips in and out of the County for himself and family.

He has used his office for the purpose of displacing old and experienced employees of the County and substituting relatives and political friends for such positions.

He has used his office to promote his political ends.

He has used his office to promote the financial welfare of his relative, W. E. Snell, constable of the nineteenth township, in giving Snell a position as night watchman, and also road work, well knowing the physical impossibility of Snell being able to attend to three positions at one time.

Rambo retorted painstakingly with terse, explicit explanations that carried conviction:

I have used my office solely for the people's benefit, have discharged incompetent hangers-on, and employed competent

[18] *Municipal League Bulletin*, April 14, 1914.

and efficient servants. I prefer loyal employees over obstructing and harassing political enemies.

Neither I nor my friends have gained a penny illegally or dishonestly through my public service; a wagon sold to the county for sixty-five dollars when road work was pressing by a corporation in which I am a minor stockholder, would have cost the county two hundred dollars from dealers, and delivery could not be had because of war conditions.

I have used the county automobile on trips inspecting road-making in adjoining counties; and inspecting road machinery, but never for pleasure. I have used my own automobile over three thousand miles in county work.

I did not suggest W. E. Snell, nominate or second his nomination. Four Supervisors voted for his employment. He has proved to be a capable and efficient officer. No other relative of mine is in public service.

I have served the people, violated no law, and have taken no orders. I am and have been independent of the political and liquor machines. The charges against me are trivial, malicious, and false.

H. C. Rambo.

The voters turned out three hundred stronger than they had for the general election of the preceding year and gave Rambo a vote of confidence of 2,110 to 798. Although his former opponent was running to succeed him, Rambo polled six hundred more votes than in the original election.

Supervisor Edward W. Black of San Luis Obispo county encountered a similar situation. He was charged indiscriminately, generally, and vaguely with every shortcoming from failure to listen to suggestions from constituents to indifference in the matter of squirrel abatement.

Black's succinct and clear-cut reply might well be read and pondered by any community before launching too hastily on a recall campaign:

Answering the recall petition, I submit, that the statements therein contained are very unfair and unjust to me, there being

no specific charge against me that would warrant the voters of the Fifth District in recalling me for any official act of mine during the ten years I have faithfully and honestly served the People, not alone of my district but of the whole County. If a faithful Public Servant can be removed from office, merely to satisfy the spirit of revenge of some people with whom that official had the courage to differ on questions of policy (there being no question of dishonesty or official corruption raised), then truly are you holding a threat over every faithful official, that he must do whatever someone claiming influence in his district demands, however much his judgment and conscience dictates otherwise, or he must submit to the humiliation and expense of a recall election founded upon false and flimsy charges as in this case. I know the People of the District will look at this matter in the right light and I willingly submit the same to their better judgment.

EDWARD W. BLACK.

Comparatively little interest was aroused in the movement, many of the people who signed the petition later voted against the recall, and Black was sustained by a one-sided vote of 957 to 119.

8. Another instance of a futile attempt to recall a supervisor because of disagreement over his policy with regard to county road work occurred in Monterey county in 1915. It was charged that he "employs incompetent men on roads; disregards the desires of the majority of taxpayers; does not properly oversee road work."

9. One of the most characteristic features of county recalls stood out prominently in an attempt to recall Supervisor Chris Jorgensen of the first, or "west side," district of Fresno county in 1928. A major problem of any board of supervisors with jurisdiction over a large territory is the equitable distribution of public funds, especially for road construction. Not only is each supervisor expected to secure special favors of this nature for his constituency, but he must keep all sections of his district

contented with their allotment as well. Failure to give satisfaction in this respect had terminated Supervisor Wells' official career in 1920, and Supervisor Jorgensen was charged with a similar offense in "not properly representing his district in securing a proper allotment of public funds for the building of improvements." [14] The people of the towns on the "west side" felt that they had not been receiving their share of the county road money, and that the only way they could make themselves heard was by recalling Jorgensen. In addition there was much of the personal element involved. Jorgensen had not held office for twenty years or more without making some political enemies.

A general feeling prevailed that the recall in Fresno county had been overdone, and an organized movement developed to make the task of the instigators of the movement to oust Jorgensen as difficult as possible. An anti-recall organization of Fresno business men outside of the district was formed; a sweeping investigation into alleged irregularities in connection with the petition was conducted by the grand jury; and Frank L. Fowler, head of the recall movement, was indicted on charges of violation of the election laws in connection with the signing of names to the recall petitions.[15] Charges that the grand jury had been "influenced and coerced" precipitated a court inquiry into the conditions surrounding the indictment.[16]

The situation was further complicated by the action of the county supervisors in setting February 29 as the date for the election, thereby obviating the possibility of any

[14] *Fresno Bee*, January 4, 1928.

[15] *Ibid.*, January 5, 16, 17, 18, 1928.
It was specifically charged that Fowler made a false affidavit in connection with the signatures of four persons and that he falsely swore that he personally circulated the petition and saw two persons sign, when, in fact, he neither circulated the petition nor saw them sign it. (*Los Angeles Times*, January 19, 1928.)

[16] *Los Angeles Times*, February 4, 1928.

candidate regularly qualifying to get his name on the ballot other than as a "write-in." [17] Such organized opposition was more than the ranchers and small business men back of the movement could cope with, and Jorgensen was kept in office by a vote of 2,294 to 1,746.

THE JUDICIARY

After all the outcry that the recall of judges would debase the courts, intimidate the judiciary, and subject the administration of justice to the whims of the mob, the results in California have been almost ridiculously insignificant. It is doubtful that a judge ever performs a judicial act with the recall in mind. Occasional threats of judicial recall have been hurled; but the net result has been the removal of three municipal judges in San Francisco,[18] five recall elections involving justices of the peace, three of which were successful, and the filing of an insufficient petition for the recall of a judge of the superior court.

Judge Conkling of the Imperial county superior court had the distinction of being the one judge of a county court in California assailed by a petition for recall. The attempt was headed by leaders of the American Conservation Club whose wrath had been incurred by Judge Conkling, who, with Judge Cole, appointed both the 1924 and 1925 grand juries that brought accusations against the Imperial Irrigation District directors of malfeasance in office.

The jury held that large sums of district money had been spent unlawfully in maintaining at Washington a lobby to work for Colorado river development legislation. The judges were accused of naming jurymen who were hostile to the All-American irrigation canal project, and under the influence of the Chandler-*Los Angeles Times*

[17] *Los Angeles Times*, January 28, 1928.
[18] *Above*, pp. 250-251, 257-259.

interests. Chandler and his associates possessed large holdings of land in Mexico which, under existing arrangements, were benefiting at the expense of the ranchers on the American side of the border. District Attorney Utley aroused the ire of the conservationists because his office conducted the investigation which led the grand juries to bring their charges. The petition for the recall of both Judge Conkling and District Attorney Utley was filed and duly certified, but declared illegal by the court in July, 1925.[19]

Justices of the Peace.—The existence in California of nearly six hundred judicial townships with an elective justice of the peace in each has furnished abundant opportunity for experimentation with the recall of the petty judiciary. But the public has displayed commendable reticence in assuming dictatorial authority over judicial functions and has sought to recall but four justices of the peace. Two were summarily recalled, another was ousted on the second attempt, and the fourth defended his position successfully against the recall attack.

1. A justice of the peace of Monterey county was recalled in 1913 on the ground that he was "totally unfit to hold office."

2. W. H. Tuttle, justice of the peace of the first judicial township of Fresno county, was recalled in 1924 by a vote of 428 to 366. The reasons given for his recall were devastating and succinct:

> First, he the said W. H. Tuttle does not keep office hours, does not attend to his official duties.
> Second, is unfair in his decisions.
> Third, incompetent.

In this instance, as in many others, the charges cannot be taken at their face value; for Mr. Tuttle, admittedly

[19] Files of the *Los Angeles Times* and *Los Angeles Examiner*, July 1-31, 1925.

one of the best qualified men in his township, was ousted largely because he lived in the extreme southern end of the township, whereas most of the voters were in the northern end.

3 & 4. Two attempts, five years apart, were necessary to recall George M. Cook, justice of the peace of the sixteenth township of Kern county. The grounds on which his retirement was sought in 1917 included "disregard of his duties," and manifestation of "a spirit of bias, prejudice, and unfairness" which "will afford an obstacle to the progress and material prosperity of said Township." The public did not find these vague charges especially convincing and voted 667 to 503 to keep him in office.

In 1922 a group of Cook's constituents opened fire on him again, this time because he had affiliated himself with the Ku Klux Klan. The recall movement against him developed with that against Supervisor Abel of the same locality, and involved the same specific charge of membership in the "Invisible Empire."

There was no circumlocution or hedging in the manner in which the judge met the issue. Daring the instigators of the recall to reveal their identity, he elected to stand or fall on the merits of the Klan and of his affiliation with it. His space on the sample ballot carried this dictum:

> Some few months ago I took an oath to respect and support the Constitution of these United States, that I very much so favored the purity of American Womanhood, that I believed the Church and State should forever remain separate, that I believed in the supremacy of the white race and that I believed in our public school system, and I do defy anyone I care not who that anyone may be to show me anything in the principles above mentioned that conflicts in any way, shape, manner or form with the duty I owe to my country, to my family and to my fellow man.
>
> I realized full well at the time the sanctity of the oath

advocating these principles, and I wasn't sorry at the time and never will be sorry for taking such an oath.

Who advocated the recalls and why?

What crime if any has any official sought to be recalled committed?

Not one of the so-called Citizens Committee has dared sign his name to any of the articles appearing in the daily led-horse press, nor do any of them come forward and announce themselves as members of that self-constituted committee.

GEORGE M. COOK.

The public apparently was passing judgment on Cook as a Klansman rather than on Cook as a judge. At any rate they removed him from office by a vote of 1,277 to 953 in an election in which over sixty per cent. of the voters participated.

5. When a group circulated a petition for the recall of J. S. Crandall, justice of the peace of Gardena township, Los Angeles county, in 1925 they played into the judge's hands by employing merely the conventional charges that, "The incumbent is incompetent to hold office and properly perform the duties demanded of such office."

Judge Crandall fought back with incisive statements of his accomplishments and principles that were in refreshing contrast to the vague imputations of his opponents, and won the contest. His 200-word defense on the sample ballot was a masterpiece in recall campaign platforms:

Was admitted to the Bar in 1882; am entitled to practice in all courts of California and Michigan and on motion in all courts of the United States including the Supreme Court at Washington. Served as County Attorney of Sanilac County, Michigan, two terms; while Justice of Peace of Gardena Township during last two years, have disposed of over 400 cases, civil and criminal, with less than 10 appeals and no reversals to my knowledge. Does this support in any degree, the charge of incompetency, on which my recall is sought?

My policy has been and will continue:

(*a*) *Make good citizens rather than convicts;*

(*b*) *Administer severe penalties to habitual law-breakers;*

(*c*) *Solicit the support and counsel of all good citizens;*

(*d*) *To be owned and controlled by no man or set of men.*

I ask no support from bootleggers, gamblers, and habitual offenders. I do expect the support of all law-abiding citizens. All I ask is fair treatment. I do not believe my record, upon which I am willing to stand, warrants the large expense, bitterness, and factional strife which this election entails.

Respectfully submitted with good will to all and malice toward none.

J. S. Crandall, Justice.

LAW ENFORCEMENT OFFICERS

District Attorneys.—District attorneys lack that aura of austere sanctity that guards the bench from popular defilement, and frequently incur the displeasure of large portions of the electorate. Regarded as the originating and impelling power behind the law-enforcement machinery, these officials are subject to the criticism both of the agencies of reform and the organized forces of lawlessness. Under such conditions it is impossible for even the best-intentioned district attorney to please all elements of his constituency. Attempts at recalling this class of officials have progressed as far as the filing of petitions on five different occasions. The movement against District Attorney Utley, who was assailed jointly with Judge Conkling, terminated in the Imperial county courts. Only one of the four movements which came to an election resulted in the ousting of the official under fire.

1. Barclay McCowan of Kern county was the recipient of the exclusive distinction of being the only county district attorney recalled from office in California. Mr. McCowan was both a beneficiary and a victim of a local movement for political reform. Kern county and its

county seat, Bakersfield, entered the era of "progressive" politics in California under the domination of a corrupt political ring whose picturesque operations would have done credit to any political machine in the country. Their possession of the district attorneyship was the key to their control of the law-enforcement machinery of the county. As the reform element gained courage from the rise of progressivism throughout the state, they became ambitious to supplant the boss-ridden incumbent of the district attorney's office with a man of their own choice. So futile was the prospect of success that it proved impossible to persuade any influential lawyer in the county to make the race. Finally, in the 1914 campaign, they chose as their standard bearer Barclay McCowan because he was affable, popular and "available." They admitted that as an "attorney" with little legal training who had been admitted to the Bar in a territory where the formalities were casual, he was hardly ideal. But it was their feeling that he might be used as an entering wedge—and there was always the recall.

By some unexpected stroke of political fortune McCowan was actually elected. As district attorney he performed according to the worst expectations of his supporters. Possessing inadequate knowledge of law, he lacked the perspicacity to let his deputies function for him, and in addition made little effort to further the reform policies of the reformers who had put him in office.

This group maintained an attitude of tolerance for two years and then launched a movement for his recall. Their disgruntlement was voiced in the charges on the petition:

> He does not possess the professional training, knowledge, or experience requisite to the conduct of his office.
>
> He eavesdropped upon and sought to intimidate the Grand Juries of this County.
>
> He uses his office to vent his personal spite against those unfriendly to him.

He has made no effort to suppress prostitution or vice, notwithstanding his pledges to the people.

He has burdened the taxpayers with unnecessary expense and used his deputies for his private business.

Cases demanding punishment of the offender have been dismissed on the eve of trial without reason or excuse, and when all the evidence pointed to the speedy conviction of the offender.

Cases have been dismissed upon flimsy pretexts when the accused, or his family, were people of wealth, or of social or political standing.

He is using the District Attorney's office to promote the interests of Los Angeles capitalists, in securing for their private benefit the flood waters of the Kern River, to the detriment of the farmers of Kern County and in violation of his pledges to the people.

The petition for McCowan's recall was filed in February, 1917, and duly certified as sufficient; but some ingenious legal mind made use of the fact that the signatures lacked dates, to secure the nullification of the petition in the courts. The laborious task of securing some three thousand signatures had to be repeated; but this was accomplished in March, and in April McCowan was retired to private life by a vote of 6,366 to 4,112. The vote was some four thousand short of that cast at the time of his election.

2. Only once in the history of Trinity county has a recall been attempted. In 1917 an effort was made to recall the district attorney on the charge of misconduct in office; but he was sustained by a narrow margin of 52 votes out of about 900 polled. It was the concensus of opinion that the official was guilty as charged; but it was also the conservative sentiment of many of the good country folk that the recall was a vicious institution, and the incumbent should be allowed to complete his term in office before a change was made.

3. District Attorney George H. Hoyle of Sonoma county was threatened with recall in 1920 on general charges of incompetency, inefficiency, neglect and failure to perform official duties. It seems that behind these formal charges lay a county fight between various supervisors in the matter of slicing the road-fund melon. Evidently those who began the recall did it with the ostensible reasons mentioned above, but really because Hoyle failed to take arms with the faction which came out second best in the apportionment of funds. Both the State Law Enforcement League and the Sonoma County Ministerial Union fought Hoyle and backed the recall for his alleged failure to prosecute vigorously moral issues. Hoyle was too strong for even this alignment of forces and routed his opponents by a vote of 5,979 to 3,304.

4. A group of disgruntled citizens of El Dorado county launched a recall attack against District Attorney Abe Darlington in 1923. They gave as the causes of their dissatisfaction:

1. That the said Abe Darlington is extravagant in the use of the taxpayers' money.
2. That the said Abe Darlington is incompetent and employs another attorney to perform official duties that should be performed by himself. (Darlington apparently was stone deaf.)
3. That the said Abe Darlington neglects his official duties because of being occupied in private practice.
4. That the said Abe Darlington has instituted many criminal prosecutions against innocent persons without reasonable grounds therefor.

The public evidently placed more confidence in the incumbent than in the inexperienced attorney who opposed him, for Darlington was victorious by a vote of 1,561 to 898. At the expiration of his term, however, he failed to become a candidate for reëlection.

CONSTABLES.—Constables, although they are elected in the nearly six hundred judicial townships of the state, have been assailed by the recall as infrequently as state senators. But three of this class of officials have been required to submit to a recall election, and all three elections took place in the popular recall years of 1924 and 1925.

The recall of two constables of Fresno county was sought, one in 1924 and the other in 1925, on the same general charges—"inefficiency and neglect of duty" and "conduct inconsistent with the best interests of, and the maintenance of order in" the township. C. D. Printz of the seventeenth township won his contest in 1924 by a vote of 403 to 303. C. W. Nettles of the eleventh township was ousted the following year by the decisive vote of 512 to 200. The real reason for Constable Nettles' recall was his refusal to lend his services to a campaign to compel certain farmers to sign a coöperative contract and agreement. He was absolutely conscientious in his conduct, but his course did not square with the opinion of the majority of his neighbors.

The recall of Constable Jones of the fifth township of Kern county in 1924 seriously concerned the morals of the community. Jones appears, in a weak moment, to have committed a minor indiscretion that shocked the finer sensibilities of his constituency. It was charged, "That the said Constable J. A. Jones has within the last ninety days written and distributed a scurrulous (*sic*), vulgar and obscene letter and has confessed to the writing of the same and the distribution of the same."

Although there was a suspicion that the affair was a "frame-up" by the constable's enemies, Jones admitted his bad judgment and elected to stand on his official record. He declared through the ballot:

I have publicly acknowledged the writing of an unsigned

letter, and sending it to a party, after several apparent personal invitations. The language of the petition does not truthfully state the character of the wording of the note or the "distribution." Still I admit the indiscretion in writing the note.

There are personal and selfish interests, and interests inimical to Wasco's moral and lawful welfare that have been and are working for my recall. The interests of morality are not their interests.

Since I have been in office I have worked earnestly, continuously, and fearlessly to detect and crush lawlessness and crime. Minors have been kept from pool-halls, slot machines have been retired, bootlegging has been detected and punished, gambling has been reduced, drunkenness restricted and the use of liquors and wines checked from fear of detection.

Since I have been in office my official conduct has been satisfactory to and commended by the Court, the lawyers whom I have served, and their clients.

I believe that I can truthfully assume that the best informed citizens of Wasco recognize that the moral and lawful conditions prevailing at Wasco have been served by my official watchfulness.

J. A. Jones.

The electorate was strangely indifferent to the scandalous situation disclosed and cast a vote fifty per cent. under that of the previous general election; but Jones' opponents turned out in sufficient numbers to terminate his official career by a vote of 211 to 152.

The record of the use of the recall in the counties of California is far from imposing either in its extensiveness or in its consequences. But it does reveal something, not only of the good and bad possibilities of the recall, but of the major political interests of rural communities and of bucolic political intelligence.

None of the eight instances of actual removal by recall

was the result of serious malfeasance in office. In such cases, of which there have been a few, the courts have been permitted to function. There seems to have been adequate justification, on the ground of incompetency alone, for the outstanding case of the recall of a district attorney. The other seven casualties can be attributed to the natural, if not normal, functioning of representative democracy. One was the result of the Klan in politics; another, of a man's political enemies' alacrity in taking advantage of a personal indiscretion; the remaining five, the reflection of popular sentiment opposed to the public policy adopted by the incumbent. This last use of the recall would seem more justifiable and desirable if such movements were not so commonly accompanied by blackguarding and personal abuse. The fact that fewer than a third of the elections were successful is explainable, in part, by the tentative and conservative attitude with which the rural population regards the principle of the recall.

Of the seventeen recalls that failed of their purpose two or three deserved success, but fell short because of hostility to the principle of the recall; the greater number were tests of majority opinion as to public policy; and a few were inexcusable agitations by insignificant minorities or by groups opposed to the public interest. Overuse or misuse of the recall tends to be self-corrective in settled communities, where conservative sentiment is against its employment except in extreme cases and seeks to discourage repetition of its too hasty or ill-considered use. While county electorates have not risen to new planes of political intelligence and discretion in the use of the recall, they have applied it sparingly and have found it useful in holding public officials responsible during comparatively long terms of office.

RECALL MOVEMENTS IN CALIFORNIA COUNTIES

County	*Population* 1920	*Date*	*Officials Involved*	*Petition Insufficient*	*Litigation*	*Election Failed*	*Recall Successful*
Alameda	344,177	1915	Supervisor	♯	.....	.....	.....
Del Norte	2,759	1915	Supervisor	.....	♯	.....	.....
El Dorado	6,426	1915	Supervisor	.....	.....	♯	.....
" "		1923	District Attorney	.....	.....	♯	.....
Fresno	128,779	1920	Supervisor	.....	.....	.....	♯
"		1924	Constable 17th Jud. Twp.	.....	.....	♯	.....
"		1924	Justice of the Peace, 1st Jud. Twp.	.....	.....	.....	♯
"		1925	Constable 11th Jud. Twp.	.....	.....	.....	♯
"		1928	Supervisor	.....	.....	♯	.....
Imperial	43,453	1925	Judge of Superior Court and District Attorney	.....	♯	.....	.....
Kern	54,843	1917	Justice of the Peace, 16th Jud. Twp.	.....	.....	♯	.....
"		1917	District Attorney	.....	.....	.....	♯
"		1919	Supervisor	.....	.....	♯	.....
"		1922	Justice of the Peace, 16th Jud. Twp.	.....	.....	.....	♯
"		1922	Supervisor	.....	.....	♯	.....
"		1924	Constable, 5th Jud. Twp.	.....	.....	.....	♯
"		1925	Supervisor	.....	.....	♯	.....
Los Angeles	936,455	1914	Supervisor	.....	.....	♯	.....
" "		1925	Justice of the Peace, Gardena Twp.	.....	.....	♯	.....
Monterey	27,980	1913	Justice of Peace	.....	.....	.....	♯
"		1915	Supervisor	.....	.....	♯	.....
San Luis Obispo	21,893	1919	Supervisor	.....	.....	♯	.....
Solano	40,602	1914	Supervisor	.....	.....	.....	♯
Sonoma	52.090	1913	Supervisor	.....	.....	♯	.....
"		1920	District Attorney	.....	.....	♯	.....
Trinity	2,551	1917	District Attorney	.....	.....	♯	.....

THE RECALL IN IRRIGATION DISTRICTS

The ranchers and farmers of California have found the recall a useful weapon in fighting their battles over water. The state is covered, in addition to the ordinary political subdivisions, with a network of "irrigation districts," "water districts," and "public utility districts," most of which are the result of the needs of agriculture in a semi-arid region. These districts have been created by the respective property owners or voters, under authorization of state laws, for the specific and limited purposes which their titles imply. Each district is managed by a locally elected board of directors, usually from three to five in number, who are authorized to perform such essential functions as the acquisition of necessary lands and water rights, the construction of dams, reservoirs, and canals, the establishment of regulations for the use of the water, and the holding of elections for the voting of bonds. Most of the general laws providing for the organization and management of such districts include provisions for the recall of all elective officials.[20]

The operation of the recall in such governmental areas is an unusually arresting phenomenon of democratic control. The voters, who are commonly property owners with a direct interest in the success of the enterprise, are actually engaged in promoting a plan of economic coöperation. The function of each district is not only definite and limited but of vital importance to the economic welfare of the electors; the elective officials are few in number and hold office, as a rule, for four-year terms; and the recall provides a means of continuous popular surveillance of their policies.

The information with regard to the functioning of the recall which has been secured from some seventy-five districts indicates that in the great majority of cases the

[20] For the laws relating to the recall in special districts see pp. 77-79.

ranchers have been able to settle their water problems by less radical methods. Only sixteen districts have resorted to the recall; but the amazing record of the Modesto district of eleven different usages has raised the total number of recall movements in these districts to twenty-seven. As shown by the accompanying table twenty of the twenty-seven petitions filed against irrigation district directors have come to an election; slightly less than half of these have been successful; and but fifteen officials have been removed from office.

SUMMARY OF RECALL MOVEMENTS IN IRRIGATION DISTRICTS

		Number of Officials Involved
Number of districts investigated	75	
Number of districts in which petitions filed	16	
Number of times petitions filed	27	55
Number of times petitions insufficient	4	7
Number of times recall averted by litigation	3	9
Number of times recall successful	8[1]	14
Number of times election failed	11	22
Number of elections with divided results	1[2]	3

[1] One director resigned before petition filed.
[2] Two officials were sustained and one recalled.

The most frequent cause of recall movements that develop in irrigation districts is, as might be expected, that of disagreement over administrative policy. Heated disputes often occur over questions of finance; sometimes dissension arises over the general manager employed by the directors; and occasionally the wrath of one faction is aroused by the feeling that the board has been unfairly discriminating or partisan in favoring another group. Friction over such matters of serious moment is often aggravated by political rivalry and personal ill feeling. For

this reason the charges in recall petitions of mismanagement and inefficiency cannot be taken at their face value; but must be construed somewhat in the light of the personalities and interests that enter into the controversy.

The different aspects of recall controversies over matters of policy are apparent in the following illustrations. In 1922 a director of the Merced Irrigation District was recalled by a vote of 326 to 135. It was charged that he was not in harmony with the sentiment of the electors in methods of conducting economical and practical business administration, and that he was not in harmony with the electors as to the manager and was upholding his policies against their wishes. The desire to shift the balance of power on the board of directors in order to secure the dismissal of a disliked manager was the fundamental reason for the movement. In 1923 an ineffectual recall movement in the Banta-Carbona district was instituted to prevent the submission to a popular vote of a proposed bond issue. An attempted recall of two directors of the Waterford district in 1924 was sought on the general grounds that the assailed officials were "inefficient, not representing the sentiment and wishes of the water users in managing and handling the affairs of the District, and causing the District to spend money in a careless, reckless, and extravagant manner." Personal ambitions and the desire for economy were the influential factors in this movement. An unsuccessful attempt to recall the five members of the board of directors of the Oakdale district in 1914 was ostensibly based on "dissatisfaction with the policy of the Board in creating an indebtedness for improvements," but was commonly regarded as having been motivated largely by "jealousy and spite." In a somewhat similar movement launched against the directors of the Palmdale district in 1926 the charge of "negligently and carelessly transacting district business" was largely a screen for the personal grudge of opposition leaders. The

result, in this district, has been to crystallize public sentiment against the facility with which anyone can start a petition and to make it difficult to get signers even for a real cause.

The citizen proprietors of irrigation districts have demonstrated their capacity, when left to themselves, to solve their problems efficiently, economically, and with comparatively little friction. But a number of irrigation district recalls have been the result of gratuitous interference of outside interests—promoters, land speculators, and power companies. The recall provision proved valuable to the Honey Lake Valley Irrigation District in 1918, when it became evident that certain officials were the mere tools of outside promoters. Two directors were recalled and the district was saved from being used for speculative purposes. A conflict of interest between the resident taxpayers of the Vista district and outside speculators resulted in the circulation of a recall petition and the resignation of a director in 1926. The electors of the district opposed him because he apparently was guided by the wishes of outside promoters and favored an outside man for resident engineer "rather than home talent which is conscientious, competent, and familiar with the people, the country and the work."

A more notorious example of recall agitation fomented by the encroachments of outside interests has been presented by the Imperial Irrigation District. The history of this district is a part of that of the famous Imperial Valley, reclaimed from a barren and forbidding desert waste by the heroic efforts of American farmers. This rich valley, its future intimately linked with the fate of pending Colorado River development, receives its only supply of irrigation water from the Colorado by way of the Imperial Irrigation Canal. The canal extends about sixty miles through Mexico before it reaches Imperial Valley in California. This situation prevails because

highlands made a canal entirely on American soil too costly for the original settlers.

Just below the international boundary line in Mexico are some 800,000 acres of land largely owned by the Harry Chandler-*Los Angeles Times* interests. The canal flows through the heart of this huge area. These expensive irrigation and flood protection works in Mexico, financed by American farmers in Imperial Valley, have made the Chandler holdings exceedingly valuable. In addition to this they are served with water, under the terms of an existing contract, at a lower rate than the American farmers are required to pay.

The schemes of the Chandler interests to control boards of directors of the Imperial district and the desire of the ranchers to get directors to try to compel the Chandler group to pay a just portion of the enormous cost of maintaining levees and canals have given rise to much political agitation, to frequent threats of recall, and to an unsuccessful recall election in 1915. This futile recall movement was directed against two members of the board who were charged with furthering the development of the Mexican canal system at the expense of American lands. When the ranchers found that in this instance the recall had failed as a remedy for their difficulties, they adopted more vigorous tactics. In 1916 when a majority of the directors was acting contrary to public opinion in favoring the *Times* interests, several hundred grim-faced farmers silently gathered at the board meeting one day. They crowded in until they fairly engulfed the directors. Some had revolvers on their hips; several carried ropes coiled. The directors promptly resigned.

The chronically recurrent employment of the recall in any locality readily suggests the irritating presence of a disturbing element of some unusual nature. In the Modesto Irrigation District the main reason for the excessive recall agitation has been the sharp practices of

domineering light and power interests. A large majority of the eleven recalls in this district can be traced directly or indirectly to the struggle the people of the district have made to attain public ownership of the generation and distribution of their electrical energy.

When the directors included in their plans for the construction of the great Don Pedro dam the installation of hydro-electric generating plants which would supply the territory with cheap power and at the same time help finance the irrigation project, the large power company operating in the district assumed a very truculent attitude. It was perfectly willing for the district to go to the expensive work of impounding and distributing the water, and of generating the power as well; but when the people began to think of distributing the power also, instead of wholesaling it to the company, it resorted to every available method of obstruction.

The recall proved to be as usable a weapon in the hands of the power company as in the hands of the public; and through control of the press it was a simple matter for these scheming interests to invoke the recall against any director who dared to stand out against them. It would then become necessary for the public ownership group, in turn, to resort to the recall to save their project. This state of affairs continued as long as the power interests had a monopoly of the newspapers in the district. Early in 1927, however, an important Modesto paper was purchased by a firm which gives the hydro-electric power project of the district fair representation in its news. Since that time there has been but one attempted recall and it failed so miserably as to indicate the possible termination of the conflict.

The sponsorship of this extraordinary series of recalls may be summarized as follows. Power company sympathizers successfully fostered the recall of two directors in 1913. In 1914 and 1917 attempts of the people to re-

gain control of their board by means of the recall were thwarted by shrewd power-company propaganda. In 1920 the power interests sponsored the recall of three directors. Two years later the public ownership group retaliated by recalling three power company protégés. In 1923 they found it necessary to recall another director to hold control of the board. Later in 1923, and again in 1924, they failed in attempts to recall directors who gave inadequate support to the public ownership project, because the power interests had succeeded in gaining a complete monopoly of the newspapers. These men were eliminated, however, at the following general election. In 1927 a petition for the recall of a director who had expedited the negotiation of a very favorable contract with San Francisco for a block of Hetch Hetchy power for the district proved insufficient through lack of signatures.

RECALL MOVEMENTS IN CALIFORNIA IRRIGATION DISTRICTS

Name of District	*Officials Involved*	*Date*	*Petition Insufficient*	*Litigation*	*Recall Successful*	*Recall Failed*
Banta-Carbona	Three Directors	1924	.....	.....	.....	#
Beaumont	One Director	?	#	.....	.....	.....
Glenn-Colusa	Three Directors	1921	.....	#	.....	.....
Honey Lake Valley	Two Directors	1918	.....	.....	#	.....
Imperial	Two Directors	1915	.....	.....	.....	#
James	Two Directors	1925	.....	.....	.....	#
Knightsen	One Director	?	.....	.....	#	.....
Merced	One Director	1922	.....	.....	#	.....
Modesto	Three Directors	1912	.....	.....	1 recalled	2 failed
"	Two Directors	1913	.....	.....	#	.....
"	One Director	1914	.....	.....	.....	#
"	One Director	1917	.....	.....	.....	#
"	Three Directors	1920	.....	.....	#	.....
"	Three Directors	1922	.....	.....	#	.....
"	One Director	1922	.....	.....	.....	#
"	One Director	1923	.....	.....	#	.....
"	One Director	1923	.....	.....	.....	#
"	One Director	1924	.....	.....	.....	#
"	One Director	1927	#	.....	.....	.....
Oakdale	Five Directors	1914	.....	.....	.....	#
Palmdale	Three Directors	1926	#	.....	.....	.....
"	Three Directors	1926	.....	#	.....	.....
Princeton-Codora, Glenn	Two Directors	1927	#	.....	.....	.....
San Gabriel Water District	Three Directors	....	.....	.....	.....	#
South San Joaquin	Three Directors	1916	.....	#	.....	.....
Vista	One Director	1926	.....	.....	Resigned	.....
Waterford	Two Directors	1924	.....	.....	.....	#

CHAPTER IX

THE RECALL IN THE COURTS

No study of the recall in California can lay claim to any degree of completeness without discussion of the varied and extensive court proceedings that have accompanied its use. So frequently have recall movements been accompanied, or even terminated, by litigation that resort to the courts has come to be one of the unique characteristics of the operation of the plan. So easy are the means and so tempting the incentives, that the threatened official who fails to take advantage of this feature is either untutored in the history of recall procedure or is a conscientious objector to the thwarting of the intent and purpose of the law. While complete records of the cases which have been carried no further than the superior, or county, courts of the state are not available, it is safe to say that at least a fourth of all recall movements have been involved in litigation.

The extraordinary propensity of recalls to get into the courts is readily explainable. The adoption of the recall injected into the machinery of representative government a new and unique principle accompanied by a somewhat strange and complicated procedure. It was unavoidable that uncertainties, ambiguities, and omissions in the law would give rise to a need for judicial interpretation, and that carelessness or ignorance on the part of persons initiating recall proceedings would necessitate court action. The multiplicity of laws developing under the privilege of municipal home-rule contributed materially to the confusion. Added to these causes for legal action is the natural reluctance of the assailed official to have the issue of the recall come to a vote. Not only is he anxious to

avoid the expense of a campaign and the danger of removal from office, but he is prone to be resentful toward the instigators of the movement. Appointive city attorneys whose positions depend on the maintenance of the political *status quo* are always ready to aid and abet any action to obstruct the holding of elections for the recall of councilmen. All elective officials under fire have the further incentive of the time element in their favor, for if litigation does not result in complete avoidance of the election it may be productive of sufficient delay to temper the heated feelings of the public.

The following analysis presents a digest of important judicial decisions on the mooted points and issues connected with recall principles and procedure. While consideration of this aspect of the operation of the recall is necessary because of its special significance, it will probably appeal more to persons interested in the legal and technical phases of recall procedure than to those interested in the psychological aspects of popular government.

I. Constitutionality.—The first case, presented to an American court, involving a judicial determination of the constitutional validity of the principle of the recall, was an outgrowth of the initial attempt to recall a public official in the United States.[1] Judge Frank D. Oster of the superior court, in denying the application of Councilman Davenport of Los Angeles for an injunction against the holding of an election for his recall in 1904, was called upon to determine certain questions for which no direct legal precedent existed.

The first contention of the plaintiff held the principle of the recall to be in some way a violation of the spirit of the constitution. Judge Oster dealt with this argument in the following summary fashion:

> To say that an act is unconstitutional without pointing out

[1] For an account of this recall see *above*, pp. 227-231.

the particular section of the constitution which is violated is practically an admission that there is nothing in the suggestion. "The generality of such a proposition," says our supreme court, "creates an instinctive suspicion of its soundness." . . . In the words of the supreme court of the state, "if the judges were to adopt the notion that a law should be declared unconstitutional because of its repugnancy to the spirit of the constitution, they ought to employ a rapping medium to procure authentic revelations from that spirit." (Pattison *v.* Supervisors of Yuba County, 13 Cal. 175.) We do not deny that there may be a declared policy in a constitution. . . . But this policy must be manifested by the terms of the constitution, fixing with precision the particular rule, and not to be gathered by general inference, or vague and uncertain speculation of what the framers of the constitution designed, but failed clearly to express.

It was also suggested in behalf of the plaintiff "that he has some kind of property in the office which he holds, and therefore it cannot be taken from him without due process of law." Judge Oster declared that:

The authorities are practically without conflict to the effect that a public office is not property, but a mere agency, which may be terminated at any time by the principal, the sovereign people; that the incumbent holds office by no contract or grant; and that he has no vested right therein.

While it must be admitted, he further declared, that the recall scheme was a new and radical departure, it was not unconstitutional merely on that account; and he was unable to subscribe to the contention that no officer could be removed from office except when there was some showing of turpitude or malfeasance. There were too many illustrations to the contrary.

The recall scheme is not merely a variation of existing remedies, but a new and additional remedy, and like all other remedial legislation, entitled to receive a liberal construction for the purpose of rendering effective the remedy sought. The difficulty of proving turpitude or malfeasance is in itself suf-

ficient reason for a remedy which, while perhaps assuming some form of malfeasance, does not involve the necessity of proving it. I can discover no constitutional objection to the recall scheme.[2]

Not willing to accept the decision, Davenport appealed the case.

The supreme court of the state, in holding that Davenport had not been legally recalled, ignored the question of constitutionality and based its decision on the failure of the city clerk to make his certification comply with the provision of the city charter. (Davenport *v.* City of Los Angeles, 146 Cal. 508.)

In the second recall case to come before a higher court of the state the question of constitutionality was not presented; but the court ventured the following pertinent opinion:

The fixing of the tenure of office of the officers of a municipality subject to removal by the body that elected them is comparatively new in our system of government, and the interpretative branch of the law is in rather an undeveloped state on the subject. A responsible government, however, is the very foundation of the republican system, and there appears no reason why a representative should not be made to retire at any time at the request of the people, as well as at the end of a fixed period. This is not deemed incompatible with a republican form of government in France, and several of the South American states. It is similar in principle and application to the custom or rule which makes the ministry or real government of Great Britain answerable at all times for its failure to meet the approval of the electorate of that country on some measure or question of policy. (Good *v.* Common Council, 5 Cal. App. 265.) [3]

[2] Citations quoted in the *Los Angeles Express*, August 29, 1904.

[3] An appeal from an order of the superior court directing a writ of mandate to issue commanding the defendants to order an election for the recall and removal of Jay N. Reynolds, one of the defendants, from the office of councilman. For an account of this recall movement see *above*, pp. 195-196. 212.

The constitutionality of the recall in certain limited aspects has also been touched upon by the courts. In Wigley *v.* South San Joaquin Irrigation District, 31 Cal. App. 162, the court upheld the constitutionality of statutes providing for the recall of officers of specified districts. In Conn *v.* City Council, 17 Cal. App. 705, the appellate court held that the tenure of office and method of removal of an elected city official are purely municipal affairs, and that the recall in no way conflicted with the constitutional provisions relating to tenure of office or removal by impeachment.

It was argued in Hill *v.* Board of Supervisors, 176 Cal. 84, that the act of the legislature of 1911 entitled, "An act to provide for direct legislation including the initiative, referendum, and recall by electors in counties . . ." violated section 24 of Article IV of the constitution, which prescribes that every act shall embrace but one subject, which shall be expressed in its title. The contention was that as the recall had no bearing on legislation, and the act provided for "direct legislation," it was unconstitutional. The court held that the unhappy choice of a title should not be permitted to invalidate the entire act.

II. Classes of Officials Subject to Recall.—The state constitution makes provision and prescribes procedure for the recall of elective state officers. (Article XXIII, section 1.) This plan has no application to officers of a district (Wigley *v.* South San Joaquin Irrigation District, 31 Cal. App. 162) of a county, or municipality. (Cohn *v.* Isensee, 45 Cal. App. 531.) But the legislature is authorized by the constitution to provide procedure for the recall of such officers, and has done so for the recall of elective officers of counties, municipalities, and certain districts.[4] Also, when a freeholders' charter provides a

[4] For the laws determining the classes of officials subject to recall see *above*, "The Law of the Recall," especially p. 57.

method of recalling officials, it, rather than the general law, is controlling.

Conn *v.* City Council, 17 Cal. App. 705.
Baines *v.* Zemansky, 176 Cal. 369.
Sidler *v.* City Council of Bakersfield, 43 Cal. App. 349.
Ackerman *v.* Moody, 38 Cal. App. 461.
Schaefer *v.* Herman, 172 Cal. 338.

But in cases in which the charter has specified the general law as applying to certain steps in the procedure, the general law applies in these respects.[5]

Vincent *v.* Mott, 163 Cal. 342. (Holding that under the provisions of the Oakland charter, Political Code section 1142 applies to recall elections.)

No law has been enacted for the recall of school district officers, but the question arises as to the right to recall boards of education or boards of school trustees of school districts in cities and incorporated towns. In this connection the constitution provides that it shall be competent for freeholders' charters to provide "for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation, and removal, and for the number which shall constitute any one of such boards." (Constitution, Article XI, section 8½, subd. 2.)

The question of the right to recall school directors in San Diego was raised in 1918. The court held that although the San Diego school district comprises territory outside of the corporate limits of the city, and although members of the board of education are paid a salary provided for by warrants drawn upon the county treasurer, the charter recognizes the members of the board as municipal officers. Hence the right to recall them, equally

[5] See 21 California Jurisprudence 1002 for a summary.

with the right to elect them, is vested in the city of San Diego under its charter. (Ackerman *v.* Moody, 38 Cal. App. 461.)

It may be said, therefore, that the right to recall members of boards of education may properly reside in a city under its charter. It is also clear, since no special law has been enacted, that school trustees of other than city systems or county divisions are not recallable. With regard to boards of education or boards of school trustees in cities operating under general class charters the situation is uncertain, and the question does not appear to have been brought before the courts. It seems reasonable to hold, however, that where members of boards of education are considered as municipal officers they are subject to recall. Under such an interpretation the recall would apply to school directors of fifth class cities, as the general charter plan for this class specifies five elective members of a board of education; but it would not be applicable to this class of officials in sixth class cities as the legislative provision does not include them among the city officers.

III. Effect of Adoption of Recall on Other Methods of Removal.—Betkouski, a member of the Los Angeles city council, whose removal was sought in 1917 under section 18 of the charter providing for judicial investigation of certain misconduct in office, applied for a writ of prohibition to restrain the superior court from proceeding with the trial on the ground that the method of removal by recall had superseded the former plan. The appellate court ruled, in Betkouski *v.* Superior Court, 34 Cal. App. 117, that the provisions of section 18 were not superseded by the adoption of the recall provisions of the charter, but that "such section is to operate concurrently with the recall provisions of the charter."

IV. Recall Procedure.—The courts have held that the procedure prescribed for the recall of public officers

must be substantially followed. In Davenport *v.* City of Los Angeles, 146 Cal. 508, the court ruled that the charter had not been complied with because the clerk had compared a portion of the signatures with the duplicate affidavits of registration instead of with the great register, as specified. But charters and statutes have been liberally construed with a view to promoting the purpose for which they were adopted.

Conn *v.* City Council, 17 Cal. App. 705.
Fraser *v.* Cummings, 48 Cal. App. 504.
Worth *v.* Downey, 74 Cal. App. 436.

(*a*) *Form of Petition.*—While the courts are inclined to look with disfavor upon recall petitions that fail to follow the words of the statutes, as being productive of annoyance and delay; they have admitted as acceptable, petitions that have deviated from the exact wording of the statutes yet have clearly requested proceedings necessary for recall.

The city council of Lynwood refused to call an election for the recall of three of their number in 1925 on the ground that the petitions, which had been certified by the city clerk as sufficient, failed to comply with the requirements of the general statute under which the proceedings were brought. Whereas the state law required a petition "demanding the election of successors," the petition presented stated merely that the petitioners "hereby petition your honorable Board to take such proceedings as are therein provided to recall Frank M. Downey."

In passing upon an appeal from a judgment of the superior court granting a writ of mandate ordering the calling of the election, the appellate court said in Worth *v.* Downey, *supra*:

In holding that these petitions are sufficient under the statute, we do not desire to be understood as commending them as models to be followed in proceedings which may here-

after be instituted under this or similar statutes, nor as approving the practice employed in the drafting of these petitions, of departing so radically from the words of the statute. While in this case we believe the petitions to be sufficient, yet the extreme difference in their phraseology from that of the statute afforded a reasonable opportunity for a successful contest as to their validity. The result has been that the proceedings which they have initiated have been long delayed, probably to the great annoyance and vexation not only of parties directly interested but to the community involved. This litigation has also taken much of the time of the courts, now already greatly overburdened. All this could no doubt have been avoided had the petitions been drafted as nearly as practicable in the words of the statute.

In 1917 the city clerk of Taft certified a petition as insufficient because it failed to comply, as to the form in which it was filed, with the strict provisions of the law. The petition as presented consisted of five sections of three or more sheets each, all fastened together. Each section was complete in giving the statement of grounds, the signatures, and the affidavit of the circulator; but the state law requires "that each separate paper" shall have the affidavit of the circulator attached. The court, in ordering the issuance of a writ of mandamus to compel the clerk to certify to the sufficiency of the petition, however, held that it complied sufficiently with the provisions of the statute. (Facundas *v.* Curtis, 34 Cal. App. 752.)

(*b*) *Sufficiency of Grounds.*—The question of the sufficiency of the charges upon which a recall may be sought has always been a contentious point in recall procedure, and in the early years of recall history was the subject of notable litigation. Although the original recall plan specified merely that the petition should contain a general statement of the grounds on which the removal was sought, assailed officials have found it difficult to reconcile themselves to the novel idea that they

could be removed from office on general grounds "not sufficient in law." [6]

This issue was raised in 1907 in Good *v.* Common Council, 5 Cal. App. 265. It was contended that the charge, "that the official conduct and action of said Jay N. Reynolds ever since he entered on the duties of said office has been in opposition to the will and preference of his constituents, and obstructive to the best interests of the City of San Diego," was not a statement of grounds sufficient in law for removal from office. The court held the statement in the petition sufficient to cover the charter requirement of a general statement of grounds, and explained the purpose of the new principle in the following words:

> In the operation of this charter the question is not whether there was cause for the removal of the councilman from office as the word "cause" has heretofore been used in this connection. The fitness of the incumbent, or the propriety or impropriety of his conduct is not alone involved. Malfeasance, misfeasance, or nonfeasance in office may call for the exercise of the right conferred by this section, but it includes more than these. The charter provides for an answerable or responsible tenure in all elective offices. . . .

When the city council of Richmond refused, in 1911, to call a recall election for six of its members on the ground, among others, of the insufficiency of the charges, the court, in Conn *v.* City Council, *supra*, ruled with great clarity that:

> Nowhere in the procedure provided for the recall of the incumbent of an elective office is anything said which requires

[6] Litigation which developed over a recall in Bakersfield in 1919 furnishes a good illustration of the confusion which may arise from the lack of uniformity in the numerous local laws governing the recall. The city council of Bakersfield refused to call a recall election because the petition contained no statement as to why the recall was sought. The appellate court ordered the issuance of a writ of mandate because the charter did not require that the petition contain a statement of grounds. (Sidler *v.* City of Bakersfield, 43 Cal. App. 349.)

a recall petition to designate the specific acts for which the recall is sought.

People are as qualified to determine whether an administrative officer should remain in office as they were to decide upon his qualifications in the first instance, and insofar as the electors of Richmond are concerned it is clearly the privilege of the people at the polls rather than the province of the courts, to pass upon the sufficiency of the grounds stated for the removal of an elected officer by the modern method of recall election.

As a result of the early litigation on the subject of sufficiency of grounds, almost all of the recall laws of California contain the provision that the general statement of grounds "is intended solely for the information of the electors, and the sufficiency of which shall not be open to review." Although this provision was embodied in the section of the constitution and in the general statutes providing for the recall adopted in 1911, the question of the sufficiency of grounds was again raised in the courts in 1915. A supervisor of the remote county of Del Norte contested the validity of a petition for his recall on the ground, among others, that it did not comply with the requirements of the law in that "the statement of the grounds in said petition . . . is wholly and entirely false . . . and is not in conformity with the law governing the statement of such grounds." The court disposed of this contention with finality in the following words:

> The statute says that the statement of grounds "is intended solely for the information of the electors," and whether the plaintiff or the court to which he appeals regards them as sufficient grounds for the plaintiff's removal is immaterial, as is also whether the grounds are true or false. The voters to whom the question of recall or removal is submitted are the judges of the sufficiency of the grounds. (Laam *v.* McLaren, 28 Cal. App. 632.)

(*c*) *Criminal Responsibility for Statements in Recall Charges.*—While the leniency of the legal requirement as to the charges in a recall petition serves as a partial explanation of the vagueness and brevity which characterize the majority of recall petitions, the fear of liability for libel is no doubt a contributing influence.

As far as can be ascertained the only actions for libel in California against the signers and circulators of a recall petition were brought in the Marin county court by two city officials of Sausalito in 1925 on the ground that certain charges against them in a recall petition were libel *per se*.[7] A demurrer to the complaint in both actions was sustained by the trial judge on the ground that he regarded such statements as privileged, and no appeal was taken to a higher court. (Lowe *v.* Pistolesi *et al.* and Peters *v.* Pistolesi *et al.*)

It would appear, although neither the appellate nor supreme court has passed judgment on the question, that there are strong grounds for holding that charges in recall petitions are privileged. According to the Civil Code, section 47, "a privileged publication is one made: 1. In the proper discharge of an official duty. 2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law. . . ." As pointed out in 16 *California Jurisprudence*, 63-65, there was formerly some confusion in California decisions as to whether one can escape responsibility for a falsehood under the claim of privilege. "It is now thoroughly settled, however, that allegation and proof that the publication was privileged, upon any of the grounds set forth in section 47 of the Civil Code, constitute a defense, distinct from justification, and which does not depend at all upon the truth of the defamatory charge. . . . The privilege accorded by subdivision 1 and 2 of section 47 of the Civil Code is absolute and unqualified" (save in one particular not related

[7] For the text of the petition in question see. pp. 149-150.

to the recall). "No action lies upon a communication thus absolutely privileged, malice cannot be predicated of it, and the fact that it may have been malicious is immaterial."

Since it is most essential for the operation of the recall that charges in recall petitions should be at least partially, if not absolutely privileged, it is both strange and unfortunate that the question has not been brought before the higher courts. Much criticism has been directed at the inadequate and meaningless charges customarily used in recall petitions, and investigation shows that apparently there is a growing sentiment that they should be made more specific and substantial. If, however, such statements were unprivileged, no citizen would dare draft or sign a recall petition containing definite accusations of misconduct against an official without first retaining counsel to make a careful survey of the available evidence in support of the charges and its probable effect upon a jury. If a recall petition is partially privileged and a citizen has acted without malice and with a reasonable belief in the truth of his accusations, he has not subjected himself to either a civil or criminal prosecution for libel, even though his accusations are false. While it does not seem reasonable that an official's political enemies should be permitted under the guise of absolute privilege, to give vent to malicious spite through the medium of a recall petition, it is highly desirable, both for the protection of citizens willing to assume the responsibility for the ousting of undesirable officials and for the encouragement of the presentation of more specific and adequate grounds for recall, that charges in recall petitions should be partially privileged.[8]

(*d*) *Basis for Requisite Number of Signatures.*—In

[8] For a discussion of this issue in connection with the law of the recall in the state of Washington see Sam B. Warner, "Criminal Responsibility for Statements for Recall Charges," *Nat. Mun. Rev.*, Vol. XV, February, 1926.

checking a petition for the recall of three trustees in 1914, the city clerk of Redondo Beach placed an interpretation upon a slightly ambiguous provision of the general statute governing recalls in municipalities that threatened the nullification of the movement. The law provides that:

> The petition shall be signed by qualified voters equal in number to at least twenty-five per cent. of the entire vote cast within such city or town for all candidates for the office which the incumbent sought to be removed occupies, at the last preceding regular municipal election at which such officer was voted for.

By virtue of the law covering elections in sixth class cities, a portion of the board of trustees had been elected in 1912 and the remainder in 1914. The clerk, when confronted with a petition for the recall of certain trustees elected in 1912, was in a quandary as to whether to base his calculations on the total vote cast in 1912 or in 1914. He followed the latter alternative and on that basis found the petition insufficient.

The court came to the rescue of the proponents of the recall by holding that:

> While the language used is not entirely clear, it would seem to be within the reason and intent of the statute that the proportion of the signatures required which would set in motion the recall should be based upon the vote cast at the regular election at which the officer was elected, rather than a subsequent election for other trustee offices not including that which the officer in question occupies. (Robinson *v.* Anderson, 26 Cal. App. 644.)

The appellate court has since reversed this opinion with the declaration that:

> We cannot give our assent to this construction. . . . We think it is clear that the intent of the legislature in providing for twenty-five per cent. of the entire vote cast was to give some assurance that there was a substantial demand for the

removal of an elective officer before the recall might be invoked, and in providing that it should be the last general municipal election we think it is apparent that they had in mind that in the rapidly growing incorporated cities and towns the vote cast at the last regular municipal election might be considerably larger than at previous regular municipal elections, and that the phrase "at which such officer was voted for" in the act is meant to designate the office and not the individual who may occupy that office. . . . (Magoon *v.* Heath, 79 Cal. App. 632.)

(*e*) *The Withdrawal of Signatures.*—The question of whether the signers of a recall petition have the right to withdraw their names after the petition has been filed with the clerk has been decided in the negative by the courts.[9] In Laam *v.* McLaren, *supra*, the court held that the signers of a recall petition had no right to withdraw their names after the clerk had made his certification and submitted it to the board of supervisors. In support of this ruling the court cited Locher *v.* Walsh, 17 Cal. App. 727, a case involving an initiative petition, to the effect that:

> The only power conferred was in the clerk and when he had determined the facts within his power to determine, it was then too late for any signer to withdraw his name and thus defeat the jurisdiction of the clerk.

The court went a step further in Beecham *v.* Burns, *supra*, and held that the signers had no right to withdraw their names after the petition is filed with the clerk but before he has checked and certified it on the ground that, "in the law the clerk is not clothed with authority to alter the petition when it has been filed."

(*f*) *Checking and Certifying of Petitions.*—The most controverted and unsettled point in recall litigation is

[9] This ruling of course does not apply when a freeholders' charter expressly provides for the withdrawal of signatures, as is done in a few instances.

that concerning the checking and certifying of petitions. This process is far from being the simple undertaking that one might expect from the seemingly explicit wording of the law. The general statutes and the majority of the charter provisions stipulate that:

> The clerk shall examine and from the records of registration ascertain whether or not said petition is signed by the requisite number of qualified voters, and he shall attach to said petition his certification showing the result of said examination.

Questions of the nature and limits of the certifying official's authority and jurisdiction, as well as of his proper performance of his duty have resulted in much complicated litigation without the determination, as yet, of all the finer points involved.

The extent of the authority of the clerk is a question which the courts, because of the unanticipated situations that have arisen, have found increasingly difficult to define. In 1907 the appellate court in Good *v.* Common Council, *supra*, held that the clerk's authority in determining the sufficiency of a petition was final:

> The duty of determining whether or not the petition contains the proper number of signatures and the comparing of them with the great register devolves upon the city clerk. He is the person given authority to hear and determine the question of the sufficiency of the petition, and no appeal therefrom is provided and none apparently intended to be given.

Four years later the appellate court in Conn *v.* City Council, *supra*, reiterated its pronouncement that it is the function of the city clerk alone to determine the sufficiency and genuineness of signatures, but cautiously suggested that if fraud were involved, "we would not say that the clerk's certificate was conclusive, or that *mandamus* would not lie to compel an election to be called, but leave the question open for decision when it arises."

The idea that there are proper and necessary limita-

tions to the finality of the clerk's authority has been developed gradually, beginning with the Locher case in 1911 in which it was held that "in the absence of fraud or mistake," it devolved upon the clerk alone to determine the sufficiency of the petition "in respect of the requisite number of signers." (Locher *v.* Walsh, *supra*). In Laam *v.* McLaren, *supra*, the court declared more inclusively that "in the absence of fraud or mistake or other sufficient ground for challenging the correctness of the clerk's certificate," it must be held conclusive "as to the number and genuineness of the signatures of the electors entitled to vote." The failure of the clerk to comply with the requirements in the performance of his duty has also been held as valid ground for judicial review. In Davenport *v.* City of Los Angeles, *supra*, the neglect of the clerk to check from the proper records was held to have invalidated the entire proceedings, and in the recent case of Koehler *v.* Board of Trustees of the City of Coronado, 53 Cal. App. 155, the failure of the clerk to check from the proper registration list was cited as constituting valid ground for review.

The more exact determination of the extent and nature of the clerk's authority has been effected in the Koehler case and in other recent decisions.

The function of the clerk has been defined as ministerial rather than judicial in a series of decisions beginning in 1918. In Beecham *v.* Burns, *supra*, the court said:

> The clerk is not clothed with authority to receive extraneous evidence of the contents of a petition. His certificate is only required to show the results of an examination whereby from "the records of registration" he has ascertained whether or not the petition is signed by the requisite number of qualified voters.

In Watts *v.* Superior Court, 36 Cal. App. 692, a case of a referendum petition involving charges of irregularity, the

principle was reaffirmed that "as to all matters comprehended within the proper scope of the examination thus committed to the clerk, his decision thereon is final"; but in speaking of forgery and unauthorized additions the court made the further comment that:

> They are not matters which could become apparent to the clerk in the course of his inspection of the petition or his examination of the great register, and would not be included in matters passed upon by him in the determination made by him concerning the sufficiency of the petition.

The same idea was more tersely expressed when in Wright *v.* Engram, 186 Cal. 659, a case involving the finality of the certification of a recall petition by the city clerk of Redding, the court said:

> We think all that is required of the clerk to accomplish his duty is to use his eyesight and capacity for counting to determine whether the names on the petition which also appear on the record of registration constitute enough persons to authorize the recall . . . he must determine from the record of registration whether or not the fact exists. Such an examination involves merely ministerial acts and is in no sense judicial.

The court in Williams *v.* Gill, 65 Cal. App. 129, a suit to compel the city clerk of San Leandro to certify the sufficiency of a recall petition, summarized succinctly the duty of the clerk in the following words:

> His duty under the law is to do no more than verify the purported signatures appearing on the petition with the great register and certify the result of that examination. . . . In the ascertainment of this fact he has no power to go behind the face of the petition.

Certain questions have also been raised as to the manner in which the clerk shall perform these ministerial duties, and at what point he must draw the line of demarcation.

One mooted question is that of what constitutes a valid signature and a valid verification of such signature. The general laws of the state stipulate that the signer of a recall petition shall add to his signature his place of residence, his occupation, and the date of signing. The recall provisions in all freeholders' charters require the address, some of them the occupation, and a few the date of signing. The question frequently raised as to whether these requirements are to be regarded as mandatory or directory is one with regard to which there is some doubt.

It was contended, in Conn *v.* City Council, *supra,* that a recall petition was insufficient because some signers gave only their initials instead of their full names, and others failed to give the street and number of their residence. The court held, however, that the provisions of a city charter as to the mere form of a recall petition or of the signatures thereto are not to receive such a narrow construction as would render it practically impossible to invoke a recall election; but, like those of any other statute, are to be liberally construed with a view to promoting the purpose for which they were enacted. So construed, though some of the signatures were by initials rather than their full names, and some of them gave street corners instead of street and number, it was held that all the charter required of the clerk was to determine their identity, as appearing upon the register, and that the designations so given substantially complied with the charter.

The liberal ruling with regard to the signing of initials of their given names rather than full names was reaffirmed in Fraser *v.* Cummings, *supra,* when the court declared:

> The petitions which were rejected upon the sole ground that the signers did not sign their full names but used one or more initials should have been counted, if the signature used was sufficient to identify the signer and was otherwise unobjectionable. It is not necessary that an elector in signing

a petition should use his full name as it appears upon the records of registration.

The provision requiring the addition of the occupation to the signature has also been declared to be directory. It was held in Worth *v.* Downey, 74 Cal. App. 436, that the failure of signers to add their occupations did not render a petition invalid, and in support of this ruling the court cited Conn *v.* City Council, *supra*, Locher *v.* Walsh, *supra*, and Osborn *v.* Board of Supervisors, 27 Cal. App. 85.

The question of whether the adding of dates to signatures is mandatory or directory occupies a somewhat different status. The general laws of the state with regard to the initiative, referendum, and recall were amended in 1915 to provide that petitions could be signed only by persons who were regular, qualified electors at the time of signing. To make the determination of this fact possible it was stipulated that signers "shall at the time of so signing such petition or paper affix thereto the date of such signing." (Political Code, 1083a.)

In the case of Chester *v.* Hall, 55 Cal. App. 611, the court ruled, "without going to the extent of holding that the provision requiring the signer to affix the date of his signing is merely directory," that the statute "is to be liberally construed in the light of the circumstances attending each particular case." It was held, in this case, that the names without dates and those with dates affixed by others than the signers were sufficiently interspersed among those with dates properly affixed to enable the clerk to determine whether they were qualified electors at the time they signed the petition. The court concluded:

> The manifest purpose of the law requiring the signers to affix the date of signing is to guard against signatures by persons who are not qualified electors at the time of signing. The

pleadings admit that several hundred more qualified electors signed the petition than the law requires. Under such circumstances, to hold the petition is insufficient would be to follow the letter of the law in disregard to its spirit.

In Chambers *v.* Glenn Colusa, 57 Cal. App. 155, the court said more categorically with regard to the requirement of dates: "The requirement is, of course, plain and unequivocal, within the power of the legislature to prescribe, and there is no good reason for holding it to be otherwise than mandatory." Unlike the situation in the Chester case there was no means whereby the certifying official could determine by an inspection of the petition when the signatures were attached. The court said, consequently:

> It was not, therefore, his "plain ministerial duty" to certify the petition to the board. It is proper to construe liberally this as well as other provisions of the law to effect the intention of the legislature, but to hold that there was, in this case, a substantial compliance with the requirement of the statute would be a judicial usurpation of the function of the law-making branch of the government.

It is also incumbent upon the clerk to perform his task of verification from the proper registration list. The constitutional provision and the general law for the recall of municipal officials prescribe merely that the checking shall be done from the "records of registration," which are kept by the clerk or registrar of each county. The law for the recall of county officers stipulates, more specifically, the "affidavits of registration," which bear the actual signatures of the registrants. City charter provisions vary in the wording of their requirements. In the Davenport case, as has already been pointed out, a recall election was invalidated because of the failure of the Los Angeles city clerk to check from the specified records. With regard to municipalities in general the issue has

been clarified in Koehler *v.* Board of Trustees of Coronado, *supra.* The city clerk compared the names on a recall petition with the printed indices furnished by the county clerk rather than with the affidavits of registration. The court held that since it was clearly the intent of the legislature to require the city clerk "to investigate, identify and verify the persons and signatures of the signers of the petition," he had failed to comply with the law in that:

> It would be impossible for him to determine a palpable and flagrant forgery from his examination of the printed indices. . . . It will be observed that the law requires him to ascertain whether the petition is signed by the requisite number of qualified voters. If we were to hold that his duty is performed by an examination of the printed indices the electors of the city would have no assurance of the authenticity of the signatures, and it would be possible for one person to secure a copy of the printed index and write all of the names with their occupations and addresses. It is quite clear, therefore, that the reference to records of registration refers to the affidavits of registration and not to the printed index.

The question of the form of the clerk's certification has also been raised. In Good *v.* Common Council, *supra,* it was contended that when the city clerk, without giving figures, stated merely that he had compared the petition with the great register and found it sufficient, he had failed to comply with the charter requirement of "showing the result of said examination." The court held, however, that the giving of figures was unnecessary.

The principles that the clerk's jurisdiction is ministerial rather than judicial, and that in the proper performance of his ministerial function his judgment and authority are final have been clearly determined by the foregoing decisions; but as the court pointed out in Koehler *v.* Board of Trustees of City of Coronado, *supra,* "such ruling is not necessarily determinative of the entire ques-

tion." In speaking of the finality of the clerk's decision it said:

> But it is not final if there has been a failure on his part to perform his duty, nor is it a final determination upon the question of fraud committed by the verification deputies in certifying that signatures were appended in their presence when, in fact, they were not. Nor as to the forgery of names which might not be apparent by an inspection of the records of registration, nor as to additions made to signatures of a descriptive nature which would be evidenced by a comparison with the records of registration.

If the clerk fails to perform the duty of investigation he may be compelled to do so by an appropriate writ. Mandamus lies to compel an officer or board to examine the sufficiency of a petition. (Conn. *v.* City Council, *supra.*)

In considering the agency which should be looked to to provide a remedy in case of the existence of fraud, it was said in Watts *v.* Superior Court, *supra*:

> If it be true as therein alleged that certain signatures were not made by the persons who purported to have signed the same; or that additions had been made to the names as signed; such additions having been made by unauthorized persons and in a manner amounting to forgery; or if addresses have been set opposite certain signatures which addresses were not affixed thereto by the purported signer thereof, but were affixed by some person other than the purported signer; and if these facts can be shown to have affected a number of signatures to the petition sufficiently to reduce the petition below the required number, we are of the opinion that such fraudulent acts constitute appropriate subject matter for the consideration of the Superior Court as a court of equity.

In Ratto *v.* Board of Trustees, *supra*, the ruling was reaffirmed that if fraud is committed a court of equity may be resorted to.

A few city charters, with a view to the avoidance of

dilatory litigation, have conferred upon the certifying official an authority which is more final and conclusive than that delegated by the general statutes. The charter of the city of Oakland, for instance, calls upon the clerk to ascertain whether or not the petition "conforms to all the requirements of this charter." In the case of Fraser *v.* Cummings, *supra,* which involved the question of whether the city clerk could be compelled to certify as valid, signatures which he had declared invalid because they had failed to comply with the charter provision which requires the giving of the streets between which they lived as well as street and number, the court said:

> If the clerk did perform his duty and reach a different conclusion than the court might reach on the necessity of showing cross streets, the court has no jurisdiction to substitute its judgment for his. . . . It is the function of the courts to interpret the law as they find it and to leave to the municipal officers the duty of executing the law as enacted. When the people have conferred upon a ministerial officer an exclusive power to determine for them a certain fact it is not the province of the courts to substitute their judgment for that of the officer so chosen. To do so would be to set aside the plain dictates of the law.

The provision in the San Francisco charter is perhaps the best example of the efforts to make the certification of a petition final and at the same time to guard against fraud. The plan provides that:

> The Registrar of Voters shall finally determine from the records of registration whether or not said petition is signed by the requisite number of electors entitled to vote. If any signature be called in question, the said Registrar of Voters shall mail notice to such purported signer, stating that his or her name is attached to such petition and citing him or her to appear before said Registrar of Voters forthwith, naming the time and place. Said citation shall inclose a blank affidavit, denying that the person signing such affidavit signed

such petition, and said citation shall also contain a statement, that a blank affidavit denying that such person signed such petition, is enclosed, and that if such person does not desire to attend in person to deny his signature he may swear to such affidavit of denial before any officer authorized to take oaths, and mail the same to the Registrar of Voters, and that if he does not so attend and deny such signature in person, or by making and mailing such affidavit of denial, that his purported signature to such petition will be treated as genuine. . . . (Art. XI, Chap. III, sec. 3.)

Litigation accompanying the attempt to recall District Attorney Fickert in 1917-18 produced an interpretation and appraisal of the provision from the supreme court of the state. The court said, with regard to the intent of the law:

Upon consideration of the several provisions of the charter of San Francisco, relating to recall petitions, we are satisfied that the intention was to make the registrar the exclusive judge of the sufficiency of such petition in all particulars, and to exclude the courts from inquiry concerning them.

The court further declared, in considering the validity of such a provision, that:

It is competent for the charter to provide that the question of the sufficiency of a recall petition, or of the legality or regularity of other proceedings in relation thereto shall be determined by an officer specially authorized to do so, and to exclude the superior court from revising or annulling such determination.

In considering the wisdom of conferring such unlimited authority upon the registrar of voters the court said:

His powers furnish some protection against frauds and forgeries. They may not be as complete or efficient as those of a court of equity, but the time must of necessity be short in order to give the recall proceeding any practical value, and a tribunal with this summary jurisdiction is all that the conditions were deemed to allow. A tribunal is provided, and the

incumbent has, by taking the office, implicitly agreed to abide by its decisions. (Baines *v.* Zemansky, 176 Cal. 369.)

(*g*) *Calling the Election.*—When a petition is certified to the designated agency as sufficient the general statutes clearly state that "that body shall forthwith call a special election . . . to determine whether the voters shall recall said officers."

In the early recall cases the contention was often made that city councils were vested with a wide discretion in the calling of elections and despite the preponderance of decisions to the contrary, many councils still act as if they had this broad discretionary power. The court emphatically declared in Good *v.* Common Council, *supra*, that there was no discretion vested in the council in the calling of a recall election, but that its function was purely ministerial. It declared further:

> It would be a strange perversion of law if the common council in order to defeat one of the provisions of the charter, could merely, by dilatory action, not only refuse to comply with the directions of the charter but prevent the courts from finding a remedy for the wrong done by its act.

The court, in the Conn case, ruled somewhat less categorically that "granting the council the power to see whether or not the charter requirements are met in material matters of form did not invest the council with arbitrary power to refuse to take any action at all."

The court still further qualified the position taken in the Good case when it held, in Sidler *v.* City of Bakersfield, *supra*, that the duty imposed upon the council to call the election is mandatory only when a petition sufficient in form and substance is presented. "If any requisite and material statement is omitted so as to make it appear that the petition is invalid the council is justified in refusing to call the election."

That the council might question the action of the clerk when the petition is not in "due form," was reaffirmed in Laam *v.* McLaren, *supra,* Ratto *v.* Board of Supervisors, *supra,* and Koehler *v.* Board of Trustees of City of Coronado, *supra,* when it said:

> In the sense then that the certificate conclusively establishes those things which it is the duty of the clerk to do, the certificate is final and not subject to review by the trustees. This does not mean, however, that the certificate is final as to those things which it is not the duty of the clerk to do, nor is it final if the clerk failed to perform his duty. It has been held in a mandamus proceeding . . . that the duty of the trustees does not compel them to call an election where the petition is legally insufficient.

In the event that the council fails to fix the date of the election, it may be compelled to do so by an appropriate writ. (Good *v.* Common Council, *supra,* Conn *v.* Common Council, *supra.*)

It not infrequently happens, by reason of obstructive litigation or otherwise, that the time within which the recall election should have been held under the provisions of the law expires without any action having been taken. The contention has been raised by city councils that might be adversely affected, that under such circumstances no election could be called and that the courts had no jurisdiction to order an election at a later date. This contention was denied by the court in the all-inclusive Conn case when it said:

> Ordinarily a writ of mandate will not issue to compel the performance of an official act if, when the writ is applied for, the time limited by law for the action has expired, but this rule does not apply in a case like the one at bar, where the requirements and purpose of the law have been disregarded and defeated, of their own volition, by the very officers entrusted with the performance of a public duty which was clearly obligatory.

It was reaffirmed in Shaefer *v.* Herman, *supra*, that the refusal of the authorized body to call the election within the specified time did not destroy the rights of the signers.

(*h*) *Effect of Defective Nominating and Election Proceedings.*—In a recall movement against the city trustees of Healdsburg in 1923, nominating proceedings for the succession candidates were held to be defective because the nominees failed to designate in their petitions the particular trustees whom they expected to succeed. The court explained, in Riddle *v.* Hillhouse, 190 Cal. 706, that under the statute for the recall of municipal officers each officer sought to be recalled is considered as holding an office independent of any other official whose recall may be sought at the same election. It is this office which is to be filled by the successful candidate in the event that the incumbent is recalled. Hence it is essential to the nominating petition and to the preparation of the ballot that each nominee should designate the particular official that he expects to succeed in the event of the recall of the incumbent.

A council cannot be compelled to canvass the returns of an election held in contravention of the general election laws. An attempt was made in 1914 to recall two commissioners of the city of Vallejo, one of whom had one year of his term to serve and the other three years. The names of two candidates for the succession were placed on the ballot without specifying which was the candidate for the long and which for the short term. One of the incumbents was recalled, but the council refused to canvass the votes and seat his successor on the ground that the election laws had not been complied with. The Vallejo charter makes the election laws of the state applicable to municipal elections. The laws provide that "if two or more officers are to be elected for the same office for different terms, the term for which each candidate for such office is nominated shall be printed as part

of the title of the office." (Political Code, section 1197, subd. 8.) The court held, in Wilson *v.* Blake, 169 Cal. 449, that:

> A writ of mandate will not lie to compel the City Council of the City of Vallejo to canvass the returns of an election to recall two incumbents of the office of commissioners whose terms of office were different where the elections were held in contravention of such requirements. Such a writ being issued in the discretion of the Court will not be issued to compel an inferior Board or tribunal to do that which can accomplish nothing.

(*i*) *Legal Remedy in the Case of Illegal Recall Procedure.*—Recall procedure which does not conform to law may be enjoined; but this remedy is allowable only when there is a clear showing that the law is being violated. (Baines *v.* Zemansky, *supra,* Laam *v.* McLaren, *supra.*)

It is hardly necessary to say, in conclusion, that the law of the recall is still in a somewhat unsettled state. Certain controverted points of procedure in the general statutes have not been entirely clarified and others have not as yet reached the higher courts. But in view of the comparative novelty of the principle of the recall and of the somewhat stormy controversies that its operation has aroused, such a development was to have been expected. It is also to be anticipated that some of the wide variety of local charter provisions will continue to give rise to litigation, since the law of the recall has not yet passed the stage of experimentation. It can be said that while the county courts have sometimes been inclined to observe the strict letter of the statutes in their decisions, the higher courts have, on the whole, been very liberal in their upholding of the purpose and intent of the principle of the recall. Meanwhile the mooted points in recall procedure are gradually becoming established, and valuable judicial illumination is being reflected on such provisions of the law as are in need of alteration or amendment.

CHAPTER X

CONCLUSIONS

TWENTY-FIVE years of the operation of the recall in the state of its first adoption have realized neither the highest hopes of its sanguine originators nor the darkest prophecies of its cynical opponents. While the recall has not produced a democratic Utopia presided over by an officialdom responsive to every wish of an enlightened public opinion, neither has it led to the predicted political demoralization and chaos. It has been used most effectively, at times, to drive from office unfaithful, incompetent, and arbitrary officials; but it has also been employed, on occasion, without justification or beneficial result. Like all democratic political institutions it has failed to acquire automatic perfection, and its value in each instance of its use has depended upon the intelligence and judgment of the electorate which has employed it.

I. The recall was heralded by its sponsors as an admonitory measure, the existence of which would prevent the necessity for its use. Its detractors declared that the holding of recall elections would be so frequent as to produce a condition little better than anarchy.[1] While the unfortunate experiences of a few small localities have demonstrated that the recall may be used to excess, the complete record for the state shows that on the whole the

[1] *Above,* pp. 10-11, 40 note.

recall has been employed with moderation. As indicated by the accompanying table, 208 recall movements have progressed to the stage of the filing of petitions, and of these 155 have survived the vicissitudes of technical defects and official obstruction to result in elections or resignations. Although this number is several times larger than previous estimates, it is nevertheless quite insignificant when compared with the more than one thousand political subdivisions of the state entitled to use the recall. This is equally true of officials involved in recall proceedings. The officials who have been seriously threatened with this summary method of removal constitute a very exclusive and distinguished group when compared with the many thousands of officials who have held office during the period in which the law has been in effect.

The figures indicate not only that a somewhat negligible percentage of public officials become involved in recall proceedings but that those who are threatened with recall have a much better than even chance of being sustained in office. Sixteen per cent. of all recall petitions have been declared insufficient, ten per cent. of all recall movements have terminated in litigation, and in only forty-six per cent. of the movements which have come to an election have the officials been removed from office. A total of 130 public officials have been thus retired to private life. This number includes two state senators, a district attorney, two county supervisors, two constables, three justices of the peace, fifteen directors of irrigation districts, three municipal judges, nine mayors, one city manager, three city clerks, six school directors, and eighty-three commissioners or councilmen. Ten a year has been the average for the last decade.

The recall, in its operation, has thus been applied almost exclusively to local governmental officials. It has never been invoked in California against a state official

SUMMARY OF RECALL MOVEMENTS IN CALIFORNIA

	Petition Insufficient		*Litigation*		*Election Failed*		*Recall Successful*		*Total*	
	Number of Recalls	*Officials Involved*	*Number of Recalls*	*Officials Involved*	*Number of Recalls*	*Officials Involved*	*Number of Recalls*	*Officials Involved*	*Number of Recalls*	*Officials Involved*
Municipalities.....	25	60	17	35	56	148	53	105	151	348
Counties.....	3	4	1	1	15	15	8	8	27	28
Irrigation Districts...	4	7	3	9	11	24	9	15	27	55
State.....	..	..	..	..	1	1	2	2	3	3
Total.....	32	71	21	45	83	188	72*	130	208	434

*Includes three recall movements in which the results were divided and three in which officials resigned to avoid election.

elected at large, and Senators Black, Grant and Owens are the only state officials elected from districts against whom it has been directed. In practice the recall has developed largely as a municipal institution, for over two-thirds of the instances of its use have occurred in cities. The size of the municipality has been no deterrent to its employment, because while it has been used in only a fourth of the small cities of the state, it has been resorted to at one time or another by most of the larger municipalities.

In California, at least, there is no indication that the recall is passing into obsolescence. In fact, the last decade has seen not only a marked increase in its operation but also a greater appreciation of its latent possibilities. Its use prior to 1911, in the period when the law existed only in a few home-rule charters, averaged but one recall campaign a year; but following the state-wide adoption of the law, counties, irrigation districts, and small cities began to experiment with the new scheme, with the result of as many as a dozen recalls annually. In the war year of 1918, however, local politics assumed a subsidiary rôle and there was but one isolated recall movement in an irrigation district. Since that time the tendency has been toward the more general and popular use of the recall, until in 1924 twenty, and in 1925 twenty-three recall campaigns upset the smooth astronomical functioning of local elections. In the two succeeding years there was a slight recession from this unusual number of recall movements; but 1928 again produced an increase to eighteen.

An explanation of the unusual recall activity of recent years may be found largely in the malevolent buffoonery of the Ku Klux Klan, the growing pains of mushroom cities, and the desire of deposed political factions for reprisal.

TWENTY-FIVE-YEAR DISTRIBUTION OF RECALLS IN CALIFORNIA *

1904	1	1909	2	1914	10	1919	6	1924	20
1905	0	1910	1	1915	12	1920	7	1925	23
1906	2	1911	3	1916	5	1921	8	1926	16
1907	2	1912	5	1917	11	1922	12	1927	15
1908	1	1913	9	1918	1	1923	13	1928	18

* Five of the two hundred eight recalls have been omitted from this table because of doubtful dates.

II. The recall, in its operation, has given illustration of the full range of both the virtues and the vices forecast of it at the time of its original adoption. Based on the principle that a public official is a continuously responsible agent of the electorate, and that a fixed term of office does not always secure from him the proper regard for the opinions of his constituents, the recall has developed as a check upon unrepresentative officials and as a method of popular impeachment when the processes of criminal law, judicial removal, and legislative address have failed, or when the pressure of public opinion has proved insufficient to avoid the betrayal of the public trust or to secure the observance of a desired policy. While situations do sometimes arise which make desirable the removal of officials before the expiration of their terms, the electorate generally has not as yet learned to be any more judicious and discriminating in the recall of officials than in the election of officials. Unnecessary political turmoil has sometimes been aroused, needless election expenses incurred, and competent officials seriously embarrassed by shortsighted criticism and self-seeking factionalism.

In considering the justifiable and unjustifiable results of the operation of the recall it is significant that it has been applied almost entirely to political or quasi-political officials. The application of the recall to technical officers on questions of efficiency, while theoretically of questionable desirability, calls for little consideration here, be-

cause in the few areas in which such officers are subject to recall the provision has been practically a dead letter. Only one appointive official has been thus removed. This single instance, the recall of a city manager of Long Beach,[2] is far from being a convincing example of the appropriate use of the plan.

Although the judiciary of the state is subject to recall, the public has never presumed upon its prerogative to influence judicial decisions, to dictate to judges engaged in the proper performance of their duty, or to interfere in any way with the stability and independence of the judiciary. The only three judicial officials above the rank of justice of the peace whose recall has been effected—three municipal judges of San Francisco—were summarily removed with ample justification. In each case a clear-cut moral issue was involved upon which the public competently based its decision.[3]

It is absurd for an electorate to have to suffer for years from an unsatisfactory public servant because he has been elected to office for a fixed term. If there were no means for the control of such officials, the lengthening of terms of office to four years or more would be too dangerous to tolerate. No private business could be run on any such theory. It seems reasonable that if an official has acted dishonestly or illegally, if he has proved inefficient or incompetent, or if he has failed to represent his constituency he should be removed from office.

When an official is guilty of corruption which can be clearly proved his removal from office is not the proper function of the recall. It is not incumbent upon the public to usurp the prerogative of the courts in such matters, and it has not done so. The court is in a better position to get at the facts in a case of this kind and is less likely to be influenced by irrational factors. But the judicial

[2] *Above,* pp. 223-226.
[3] *Above,* pp. 250-251, 257-259.

process is somewhat cumbersome, and corruption is difficult to prove in a court of law. An official's conduct may have been so subject to suspicion as to undermine public confidence in his integrity and services without the possibility of legally proving malfeasance. Since the danger of injury to the public should take priority over an official's personal benefit from his office, such cases would seem to be fit subjects for the application of the recall. As Judge Oster said in the famous Davenport case, "The difficulty of proving official turpitude or malfeasance is in itself sufficient reason for a remedy which, while perhaps assuming some form of malfeasance, does not involve the necessity of proving it." [4] In several instances, notably those of the recall of a councilman and a mayor in Los Angeles, and of three municipal judges in San Francisco, the recall has been used most effectively to secure the removal of officials of doubtful integrity who could not be reached by the courts.

The question of the inefficiency or incompetency of an elective political or executive official is one which must be treated with a fair degree of leniency and consideration. Such officials are much more frequently stupid bunglers than they are shrewd corruptionists; but it must be born in mind that mediocre, well-meaning novices are often placed in office by the public themselves to deal with highly involved situations and problems. The recall of more officials has been sought on the grounds of "inefficiency and incompetency" than on any other charge; but the public has not been intentionally overcritical or severe. This expression, on a recall petition, is usually nothing but a generic term of disapproval for high taxes, for too many or too few public improvements, or for whatever policy the proponents of the recall dislike. The expression is safe because it is almost certain to be measurably true, and convenient because it avoids the neces-

[4] *Above*, p. 315.

sity of detailed indictments. Careful, expert study and analysis of official policies and a closer and more continuous scrutiny of the activities of local legislative bodies by interested citizens, especially in rapidly growing localities, would not infrequently bring to light inexcusable conditions which would both justify and dignify movements for recall on the grounds of incompetency. In the comparatively few instances in which this has been done by the promoters of a recall, the movement has been successful either in removing the offending official or in securing an improvement in conditions. As pointed out incisively by Arnold Bennett Hall in his *Popular Government*,[5] the determination of the guilt or innocence of an official accused of corruption or inefficiency is likely to demand information which is beyond the ability and opportunity of the average voter to obtain. But within a limited range the public is quite competent to detect malfeasance and incompetency by observation of the general results of official action. It does not, for instance, take an expert to determine the existence of both when a patented paving material, liberally spread about a town by a favored contractor, begins to deteriorate within a year of its installation.

The recall has found its most satisfactory application, however, in making possible the retirement of political officials who have arbitrarily run counter to the opinion and wishes of their constituencies. While there are many official activities upon which the average voter is not competent to pass judgment, there are numerous matters of public policy which come within the scope of his knowledge and observation, which vitally affect his welfare, and with regard to which he is entitled to honest cooperation from his elective representatives. If, for example, a mayor permits the maintenance of a wide-open town, if a council installs expensive public improvements

[5] *Op. cit.*, Chapter IX, "The Recall of Public Officers."

against the wishes of those who have to pay the bill, or if a legislative body favors one section or group of its constituency at the expense of another, there is a sound basis for the use of the recall.

The recall has proven more generally useful in California for the admonishing or removing of "misrepresentative" officials than for any other purpose. When thus used, it has in the great majority of cases, been directed against officials elected for four-year terms in areas blessed with a comparatively short ballot. During so long a term in office there is abundant opportunity and incentive for an official to follow the wishes of the local boss, the vice interests, the public utility interests, or the paving and other public improvement interests, to the detriment of the interest of the public. In fact, it is exceedingly difficult for him to avoid favoring the ingratiating crew of lobbyists that are constantly insinuating themselves into his good graces. The busy citizen, with his right of election once in four years is no match for these public relations specialists who daily haunt city halls in behalf of their presumptuous employers. But the recall is as practical a means as can be placed at his disposal for preventing these interests from gaining free range and for keeping the harried official mindful of his public responsibility. When the electorate realizes more fully that it is frequently preyed upon, through its government, by certain classes of corporations, it will find even more effective use for the recall. "Speaking of ocean-going submarines," said a councilman of a certain beach city, a veteran of numerous recall campaigns, "they can't compare in their menace with the land-going corporation submarines that cruise around our city government. They attack below the surface; suddenly a bomb goes off without warning; and the public is 'blowed up.' But if you know how to keep your eyes open you can see their periscopes."

Watching out for their periscopes, however, is not always practical for the average voter unacquainted with the intricacies of public business. In a democratic Utopia where every citizen was alert and informed, the recall would be a much more formidable weapon. Under actual conditions, however, it is sometimes possible for the recall to be used against the public by the interests that seek to use government for the promotion of selfish or sordid ends, in the same way that they frequently control elections. But because the people are sometimes vanquished by their own weapon is no justification for depriving them of so desirable a potential means of protection.

Corporate interests have much at stake in the securing of favorable action by legislative bodies, and with the aid of their adroit lobbyists are ready to turn any opening to their own advantage either in the election or in the recall of an official. Professional politicians have much the same vantage ground, and by controlling the sources of information and manipulating popular impulses, they can frequently control a situation. The recall has sometimes been misused for too trivial an issue, or has been employed on occasion by a disgruntled candidate for office or by a dismissed job-holder. The flexibility necessary for the useful functioning of any democratic instrument makes the abuse of those instruments possible. No system has ever been devised which will perfectly protect the electorate from its own lack of judgment and discrimination. It will probably continue to elect inferior men to office at times and by the same token may be deceived by a recall election with all the earmarks of respectability but which conceals varied purposes and selfish motives.

Failure to recognize the existence of defects and mistakes in the ways in which the recall has been employed will weaken its possibilities for future effectiveness. Al-

though the public cannot be expected to attain complete rationality and good judgment in the employment of so trenchant a weapon, it can learn, and is learning, to be more discriminating than in the past. Before any citizen signs a recall petition he should raise and seek answer to several always pertinent questions. Who started the recall movement and for what actual purpose? What interests are financing and promoting the campaign? Why does this newspaper favor the recall and that one oppose it? Are conditions such as to demand drastic correction? If a real grievance exists is the assailed official responsible? Have other less expensive and less formidable methods of correction been exhausted? What assurance is there that the recall will provide a remedy? While no citizen is going to find a complete answer for these searching questions, the mere consideration of them should stimulate a rational attitude toward the movement that will guard against undue gullibility, haste, and impulsiveness.

Certain general charges made against the principle of the recall deserve recognition. It has been contended that the recall suppresses the desirable qualities of courage and independence, results in official timidity and time serving, and discourages the candidacy for office of men of high calibre. There is no doubt that threat of recall is very frequently used as a club over the actions and policies of public officials. There is evidence, moreover, that such threats are frequently productive of the desired results. When the effect has been to influence an official who has attempted to repudiate his constituents, it can hardly be branded as undesirable. The danger of resulting timorousness depends entirely on the courage and independence of the official himself, and there have been very few instances in which a public official courageously performing his duty to the satisfaction of a majority of the people has been allowed to lose a recall election

through public apathy or misunderstanding. While the recall has, on occasion, been employed as a means of intimidation, there is no evidence that it has in this way seriously handicapped constructive public service, or discouraged the candidacy of able and fearless men for public office.

Those advantages of the recall which are perhaps the most constructive and significant are too intangible for more than general comment and appraisal. It has permitted the lengthening of terms of office without the risk of the establishment of official bureaucracies. Under the existence of the recall no public officer can take advantage of his four-year term to repudiate his constituency with impunity. It has established the principle of responsibility and responsiveness with a value limited only by the capacity of the public to understand it and benefit thereby. Finally it serves a useful purpose in helping to maintain public interest and confidence. The knowledge on the part of the public that it does possess a potential weapon to prevent government from slipping entirely beyond popular control tends to stimulate both an interest in its processes and a feeling of political security.

III. Recall campaigns and elections are far from being the conventional, stereotyped proceedings that are characteristic of the general political routine. While they are subject to most of the shortcomings that accompany ordinary elections they frequently overstep the bounds of deadly political conventionality and develop a colorful spontaneity, a popular enthusiasm, and an active participation of the electorate that is almost unique in this day of popular indifference and declining political interest. Under such conditions the average citizen is fully as susceptible to the devices of artful politicians as in ordinary elections, and even more likely to be swayed by his feelings in the making of decisions; but he does act with a

vigor that shows he has not lost his interest in the functioning of representative government when real issues are involved. This is especially true of small cities and of rural areas, where recall politics sometimes become intensely personal and arouse factional bitterness that requires some time to subside. Judged by the percentage of votes polled in recall elections the participation is greater than that for other types of special elections, rarely falls below the average for general elections, and frequently runs to a much higher figure. In hotly contested recalls in the smaller cities the vote polled has risen as high as ninety-three per cent. of the total registration, and on several occasions has ranged from seventy-five to eighty-five per cent.

IV. In the summarizing estimate of the operation of the recall thus far presented nothing has been said of the law itself. The emphasis has been placed upon the analysis of the human element rather than of the technical aspects of the institution, because no perfectly phrased statute can solve completely the problems created by the practice of the "devious arts of mob mastery" and by the predominantly emotional and instinctive reactions of the body politic. But it is nevertheless quite certain that some of the abuses of the recall can be eliminated and its proper functioning facilitated by improvements in certain provisions of the law.

The general laws of the state, which control the operation of the recall in the great majority of governmental areas in which it is used, stand practically as adopted in 1911. Although the provisions were carefully drawn and have proven reasonably workable, the abnormal amount of litigation which has accompanied the use of the recall suggests the desirability of eliminating certain opportunities for official obstruction and of correcting such other imperfections as may have come to light. The law, to be entirely satisfactory, must provide procedure that is

simple and understandable, it must be fair to the official whose recall is sought, it must guard as far as possible against irresponsible and unnecessary recall movements, and it must be free from loopholes for official evasion.

1. *Initiation of Recall Procedure.*—Under the present state plan a recall movement gains no official recognition until a petition is filed. This arrangement encourages the irresponsible fostering of ill-considered recalls, stimulates obstructive litigation based on technical defects which are the result of the careless drafting and circulating of petitions, and permits the continuance of the disturbing preliminaries to a recall over an unlimited period of time. It would appear desirable to establish official supervision from the initiation of recall proceedings. The requirements of the filing with the clerk of an affidavit of intention, signed by at least ten qualified voters and stating the grounds on which the recall is sought, and the publication of this declaration with the names of the signers, would aid in establishing responsibility without imposing an undue burden on the instigators of the movement.[6]

2. *The Recall Petition.*—The complaint is frequently made that recall petitions ordinarily fail to set forth adequate grounds for seeking the recall and should be required to do so by law. Since no conceivable legal provision could secure faithful compliance with such a requirement, and since the formal statement of grounds is, in practice, an unimportant part of the procedure, the proposal seems inessential. If the public wishes more specific charges it can secure them by refusing to sign vaguely drawn petitions. It is probably true that the average voter does not read petitions carefully before signing; but since a recall movement, instead of being

[6] It might be necessary, under such an arrangement, to provide against the perpetuation of an assailed councilmanic majority by a series of resignations and appointments.

conjured into being suddenly from thin air, is usually a product of widely heralded grievances, he is not dependent on the wording of the formal charges for his information. For these reasons the additional suggestion that the official whose recall is sought should be permitted to reply on the petition to the charges against him is not of vital importance. But it might serve a useful purpose in securing more critical attention from the electorate and in forcing a more careful statement from the promoters of the recall.

3. *The Securing of Signatures.*—The proper method of securing signatures to recall petitions, the number of signatures that should be required, and the means of avoiding misrepresentation, fraud and defective signatures are all problems of serious concern. The most desirable change would seem to be the requirement of sworn "verification deputies," instructed as to the provisions of the political and penal codes relating to the circulation of petitions, as solicitors. The plans of lowering the percentage of signatures and requiring the voters to sign voluntarily in some public place, or of permitting signing for or against the recall, which are being tried in several cities, are of doubtful practicality and tend unnecessarily to complicate the procedure. Instead of adopting more involved provisions it would be well to enforce more strictly the drastic legal penalties for misrepresentation and fraud.[7]

4. *Time Limit for Securing Signatures.*—The general laws impose no limit upon the time which can be taken for the securing of signatures to a petition. It is possible, in consequence, for a weakly sponsored and supported petition to be hawked about interminably, or for a completed petition to be placed in "cold storage" as a chronic threat. The requirement of a reasonable time limit on the circulation and filing of petitions would eliminate

[7] For a summary of these laws see pp. 76-77.

these abuses and at the same time work no hardship on a justifiable recall movement.

5. *Certification of Petitions and Calling of Elections.*— In a recall movement time is of the very essence of the power reserved to the people. If the proceedings to effect the removal of an official are not speedy, the power is lost. The most perplexing problem in recall law is the one of insuring that this power is not vitiated through the dilatory tactics of officials, without at the same time depriving them of a remedy in case the recall proceedings are illegal or fraudulent. The laws clearly provide that when the designated official certifies the recall petition as sufficient, the council, or other specified body, shall call an election to be held within a definitely stipulated period of time. The courts have held, however, that under the general law the finality of the clerk's certification is qualified by the existence of fraud or by the improper performance of his duty, and that under such circumstances it is not mandatory upon the council to call the election.[8]

It is not an uncommon practice, as has been pointed out, for city councils to take advantage of this situation to engage in unjustifiable evasion and obstruction by refusing, for trivial or questionable reasons, to call elections until compelled to do so after long drawn-out court proceedings. San Francisco has endeavored to avoid this difficulty by giving the registrar of voters quasi-judicial authority in determining the existence of fraud and by making his certification final and not subject to review by the courts. While such a provision may operate satisfactorily in the hands of a trained official with adequate staff and equipment, it can hardly be recommended for general use throughout the state. It seems unreasonable, when there is evidence of fraud in the proceedings, or when the clerk has failed properly to perform his duty, to deprive the impugned officials of the remedy of the

[8] *Above*, pp. 328-340.

courts. A few cities have adopted the idea of penalizing officials for failure to act. Oakland and Vallejo provide that in case the clerk or the council fail to perform any duty under the recall provision they shall not draw salary during their further continuance in office. Such a scheme might be worthy of consideration for the state were it not for the fact that the councilmen in the great majority of cities serve without pay.

When existing statutes are taken into consideration, however, it is doubtful that any amendment to the recall law for the purpose of preventing official evasion is necessary. The Penal Code already suggests a remedy which can be made speedy and effective.

The Penal Code, section 772, provides for the removal of a public officer who has "refused or neglected to perform the official duties pertaining to his office" by summary proceedings before a superior court upon an accusation in writing presented by a citizen. The procedure is clearly set forth in the law in the following words:

> When an accusation in writing, verified by the oath of any person is presented to a superior court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered in his office or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not later than ten nor less than five days from the time the accusation was presented, and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear in a summary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judgment for $500.00 in favor of the informer, and such costs as are allowed in civil cases.

It will be noted that the law calls for judicial action which is immediate and summary. The courts have held that an accusation "need not conform to those requirements of the Penal Code which deal solely with indictments in purely criminal actions; it is sufficient if it contains a statement of the acts constituting the offense in ordinary and concise language, and in such a manner as to enable a person of common understanding to know what is intended. (Woods *v.* Varnum, 85 Cal. 639, Larue *v.* Davies, 8 Cal. App. 750.)

The supreme court of the state has ruled, further, that "such a proceeding is not in effect a prosecution for a crime, but is conducted in a summary manner, there being no right to a trial by jury." (Cline *v.* Superior Court, 184 Cal. 331.) The provision is applicable to district, county, municipal, and township officers. (Penal Code, section 889.)

This statute would appear to be ideally adapted to the discouragement of dilatory tactics in recall movements, but as far as can be ascertained it was never resorted to for this purpose until 1927, and then without success. In that year it was employed in Huntington Park in an effort to secure the removal from office of three councilmen who were charged with neglect of duty in failing to set the date for an election for the recall of one of their number. The case was tried in the Los Angeles county courts before a visiting judge from a rural county and his decision was disastrous to the expectations of the plaintiffs.[9]

The defendants based their case on two points. The first, which involved merely a local irregularity, was that no law of the state permitted a city council to act on a recall petition certified by a deputy city clerk. (Illness had prevented the city clerk from functioning.) The second was that section 772, in so far as it may have pro-

[9] Barclay *v.* Blanchard, Los Angeles Superior Court Case No. 233,368.

vided for the removal of elective officers of cities and towns prior to the adoption of the recall, had been superseded by the recall.

Judge Bartlett, declaring that neither point had been passed on by a higher court in California, upheld both contentions of the defendants most ingeniously. He suggested that the opinion in Wright *v.* Engram that "we think all that is required of the clerk to accomplish his duty is to use his eyesight and capacity for counting,[10]" is sufficient to justify a belief in the mind of a member of the legislative body of a city or town, that the acts of a clerk in relation to recall petitions are personal ones which he cannot certify through a deputy." In support of his ruling on the second point he cited an Idaho case, Hodges *v.* Tucker, 138 Pacific Reporter 1139; but neglected to mention Betkouski *v.* Superior Court, 34 Cal. App. 117, which supports the principle of concurrent operation of the various methods of removal of public officers.[11]

He declared further that:

> There is another reason for which it must be held that section 772 of the Penal Code is not available for removing city and town elective officers because of some official act concerning a recall election which they have neglected or even refused to do, and that is that because of a removal for such action one of the prime purposes of the Constitutional provision permitting a recall, and of the statute providing its manner of exercise, would be defeated, and electors thereby deprived of their right to select a successor of a recalled or removed officer. . . .
>
> . . . . There is only one way to effect the recall of the officers, that will enable the recall statute to effect recalling and electing successors to those recalled. The procedure . . . is afforded in the power vested in the appellate and superior courts of this State through the medium of the writ of mandate.

[10] *Above,* p. 330.

[11] *Above,* p. 319.

The citizens of Huntington Park were able to adjust their political differences at a general election; so unfortunately, the case was not appealed.

It is obvious that section 772, because of its extensive scope, its summary method, and its special inducement to the accuser, might easily be open to abuse. For this reason the courts have exhibited an understandable hesitancy in applying it. Willful evasion of official duty in recall proceedings, however, can be discouraged only by a swift and vigorous penalty of this type. To make the law definitely applicable for this purpose, as well as to relieve the judiciary of any doubt as to their authority, it is suggested that section 772 be amended to apply specifically to officials who neglect to perform their duty in recall proceedings.

6. *Form of Ballot and Choice of Successor.*—The existing general laws provide the double form of ballot on which appear both the question of the recall of the incumbent and the names of the candidates for the vacancy in case the recall is successful. This plan is not entirely satisfactory in that it imposes an unfair handicap on the person whose recall is sought, and obscures the main issue by injecting into the controversy an election campaign for a successor. The incumbent is required to run not only against his record but against opposing candidates. Some municipalities have sought to avoid this difficulty by holding the election exclusively on the question of the recall and then following the usual appointive method of filling vacancies in selecting a successor.[12] Against this procedure are the objections that the public may in this way be deprived of certain electoral rights over an extensive period of time, and that the appointing authorities may frequently be of the faction of the recalled officials. An alternative method, occasionally

[12] A legislative amendment was adopted in Oregon in 1926 making this change in recall procedure.

used, of a second election, has the disadvantage of making additional demands on the public's time and pocketbook. There would seem to be no advantage in changing this point in the general laws until the cities which are experimenting with alternative plans demonstrate by actual use the superiority of one of them over the existing method.

V. It should be borne in mind, finally, that the recall is still in the experimental stage of development. Its operation, over the brief period in which it has been in existence, has revealed great potentialities for civic betterment when it is judiciously employed. There is a growing tendency for the recall in its use to become self-corrective of its weaknesses, for in those areas in which it has been too lightly applied sentiment is developing against its employment except as a last resort. The disquieting problems brought to light in the operation of the recall are mainly the general problems related to the functioning of all democratic government. Any expectation of an intelligence developing about the use of the recall superior to that reflected in the election of officials and the exercise of other electoral functions could arise only from an exaggerated concept of the intellectuality of mankind. While many critics express their irritation with its operation and urge the rigid curtailment of its use, there is little advocacy of the abandonment of the plan. The public is too well satisfied with the sense of security which the existence of the recall conveys to permit it to be discarded. As a defensive weapon of democracy it apparently has come to stay.

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APPENDIX

TABLE OF CASES

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MUNICIPAL CHARTER PROVISIONS

THE ADOPTION OF THE RECALL IN CALIFORNIA HOME RULE CITIES

City	Adoption of Recall Provision	Ratification by the Legislature	
Alameda	July 18, 1906	Feb. 7, 1907	California Statutes, Extra Session, 1907, p. 1101
	Jan. 9, 1917	Jan. 25, 1917	California Statutes, 1917, p. 1777
Alhambra	Oct. 4, 1914	Jan. 30, 1915	California Statutes, 1915, p. 1789
	Nov. 2, 1926*	Jan. 19, 1927	California Statutes, 1927, p. 2057
Bakersfield	Nov. 7, 1914	Jan. 23, 1915	California Statutes, 1915, p. 1572
Berkeley	Jan. 30, 1909	March 4, 1909	California Statutes, 1909, p. 1219
Burbank	Jan. 4, 1927	Jan. 19, 1927	California Statutes, 1927, p. 2121
Chico	Dec. 15, 1921	Feb. 3, 1923	California Statutes, 1923, p. 1462
Compton	Dec. 9, 1924	Jan. 27, 1925	California Statutes, 1925, p. 1222
Eureka	June 21, 1909*	March 24, 1911	California Statutes, 1911, p. 2038
Fresno	Feb. 13, 1905*	Feb. 28, 1905	California Statutes, 1905, p. 1057
	Nov. 2, 1920	Jan. 21, 1921	California Statutes, 1921, p. 1859
Glendale	March 29, 1921	May 11, 1921	California Statutes, 1921, p. 2229
Grass Valley	Nov. 30, 1920	Jan. 24, 1921	California Statutes, 1921, p. 1911
Inglewood	Dec. 14, 1926	Jan. 27, 1927	California Statutes, 1927, p. 2230
Long Beach	Feb. 5, 1907	Feb. 26, 1907	California Statutes, 1907, p. 1230
	Oct. 5, 1914	Jan. 28, 1915	California Statutes, 1915, p. 1701
	April 14, 1921	April 26, 1921	California Statutes, 1921, p. 2145
Los Angeles	March 24, 1903*	April 7, 1903	California Statutes, 1903, p. 574
	March 6, 1911*	March 26, 1911	California Statutes, 1911, p. 2082

THE ADOPTION OF THE RECALL IN CALIFORNIA HOME RULE CITIES—*Continued*

City	Adoption of Recall Provision	Ratification by the Legislature	
Los Angeles	May 6, 1924	Jan. 26, 1925	California Statutes, 1925, p. 1117
Modesto	Sept. 14, 1910	Feb. 3, 1911	California Statutes, 1911, p. 1530
Monterey	Dec. 12, 1910	March 2, 1911	California Statutes, 1911, p. 1751
	March 9, 1925	March 27, 1925	California Statutes, 1925, p. 1295
Napa	Dec. 16, 1914	Jan. 28, 1915	California Statutes, 1915, p. 1604
Oakland	Dec. 8, 1910	Feb. 15, 1911	California Statutes, 1911, p. 1559
Palo Alto	Jan. 21, 1909	Feb. 20, 1909	California Statutes, 1909, p. 1187
Pacific Grove	April 9, 1927	April 22, 1927	California Statutes, 1927, p. 2338
Pasadena	Feb. 4, 1905*	Feb. 20, 1905	California Statutes, 1905, p. 1022
Petaluma	Feb. 14, 1911	March 8, 1911	California Statutes, 1911, p. 1843
Piedmont	Feb. 27, 1923	March 22, 1923	California Statutes, 1923, p. 1578
Pomona	Feb. 16, 1911	March 10, 1911	California Statutes, 1911, p. 1952
Porterville	Oct. 5, 1926	Jan. 27, 1927	California Statutes, 1927, p. 2175
Richmond	Feb. 9, 1909	March 4, 1909	California Statutes, 1909, p. 1275
Riverside	March 1, 1907	March 9, 1907	California Statutes, 1907, p. 1345
Sacramento	Nov. 7, 1911	Dec. 20, 1911	California Statutes, 1911, p. 401
	Nov. 30, 1920	Jan. 24, 1921	California Statutes, 1921, p. 1919
Salinas	Nov. 5, 1918	Jan. 24, 1919	California Statutes, 1919, p. 1419
San Bernardino	Jan. 6, 1905	Feb. 8, 1905	California Statutes, 1905, p. 960
San Diego	Jan. 7, 1905*	Feb. 3, 1905	California Statutes, 1905, p. 922
	Feb. 3, 1915*	April 8, 1915	California Statutes, 1915, p. 1822
San Francisco	Nov. 5, 1907*	Nov. 23, 1907	California Statutes, Extra Session, 1907, p. 34

THE ADOPTION OF THE RECALL IN CALIFORNIA HOME RULE CITIES—*Continued*

City	Adoption of Recall Provision	Ratification by the Legislature	
San Francisco	Nov. 15, 1910*	Feb. 23, 1911	California Statutes, 1911, p. 1675
	Nov. 7, 1916*	Jan. 18, 1917	California Statutes, 1917, p. 1723
San Jose	April 19, 1915	May 12, 1915	California Statutes, 1915, p. 1881
San Luis Obispo	Sept. 12, 1910	Feb. 23, 1911	California Statutes, 1911, p. 1725
San Mateo	Dec. 19, 1922	Jan. 26, 1923	California Statutes, 1923, p. 1291
San Rafael	Nov. 30, 1912	March 31, 1913	California Statutes, 1913, p. 1574
Santa Barbara	Dec. 3, 1907*	Feb. 3, 1909	California Statutes, 1909, p. 1162
	Sept. 21, 1915	Jan. 27, 1917	California Statutes, 1917, p. 1853
Santa Clara	April 5, 1926	Jan. 31, 1927	California Statutes, 1927, p. 2265
Santa Cruz	Jan. 22, 1907	Feb. 12, 1907	California Statutes, 1907, p. 1155
	Jan. 31, 1911	March 10, 1911	California Statutes, 1911, p. 1879
Santa Monica	March 28, 1906	Feb. 1, 1907	California Statutes, 1907, p. 1047
	Dec. 16, 1924	March 10, 1925	California Statutes, 1925, p. 1273
Santa Rosa	Nov. 7, 1922	Jan. 29, 1923	California Statutes, 1923, p. 1315.
Stockton	Nov. 28, 1922	Jan. 29, 1923	California, Statutes, 1923, p. 1394
Tulare	Sept. 5, 1922	Feb. 3, 1923	California Statutes, 1923, p. 1511
Vallejo	Feb. 5, 1907*	March 6, 1907	California Statutes, 1907, p. 1253
	Feb. 22, 1911	March 11, 1911	California Statutes, 1911, p. 1966
	April 15, 1913*	June 2, 1913	California Statutes, 1913, p. 1694
Visalia	Jan. 4, 1923	Feb. 26, 1923	California Statutes, 1923, p. 1496

* Charter amendments. Other references are to recall provisions in new charters.

CONSTITUTION OF CALIFORNIA

Article XXIII

RECALL OF PUBLIC OFFICIALS

Effect on Elective Officials

Can Be Recalled.

Section 1. Every elective public officer of the State of California may be removed from office at any time by the electors entitled to vote for a successor of such incumbent, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

Petition, Circulation—Contents

Petition Signed by Twelve Per Cent—When Twenty Per Cent—Where Circulated—Substance of Petition.

The procedure hereunder to effect the removal of an incumbent of an elective public office shall be as follows: A petition signed by electors entitled to vote for a successor of the incumbent sought to be removed, equal in number to at least twelve per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies (provided that if the officer sought to be removed is a state officer who is elected in any political subdivision of the state, said petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies) demanding an election of a successor to the officer named in said petition, shall be addressed to the secretary of state and filed with the clerk, or registrar of voters, of the county or city and county in which the petition was circulated; pro-

vided that if the officer sought to be removed was elected in the state at large such petition shall be circulated in not less than five counties of the state, and shall be signed in each of such counties by electors equal in number to not less than one per cent of the entire vote cast, in each of said counties, at said election, as above estimated. Such petition shall contain a general statement of the grounds on which the removal is sought, which statement is intended solely for the information of the electors, and the sufficiency of which shall not be open to review.

Certification—Calling Election

Secretary of State Certifies—Date of Election.

When such petition is certified as is herein provided to the secretary of state, he shall forthwith submit the said petition, together with a certificate of its sufficiency, to the governor, who shall thereupon order and fix a date for holding the election, not less than sixty days nor more than eighty days from the date of such certificate of the secretary of state.

Publication of Election Notice—Arguments

Publication—Argument on Ballot—Counter Argument—Recall Election Held.

The governor shall make or cause to be made publication of notice for the holding of such election, and officers charged by law with duties concerning elections shall make all arrangements for such election and the same shall be conducted, returned, and the result thereof declared, in all respects as are other state elections. On the official ballot at such election shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall. And in not more than three hundred words there shall also be printed, if desired by him, the officer's justification of his course in office. Proceedings for the recall of any officer shall be deemed to be pending from the date of the filing with any county, or city and county clerk, or registrar of voters, of any recall petition against such officer; and if such officer shall resign at any time subsequent to the filing thereof, the recall

election shall be held notwithstanding such resignation, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by law, but the person appointed to fill such vacancy shall hold his office only until the person elected at the said recall election shall qualify.

Nomination by Petition

One Per Cent Petition—When and Where Filed.

Any person may be nominated for the office which is to be filled at any recall election by a petition signed by electors, qualified to vote at such recall election, equal in number to at least one per cent of the total number of votes cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Each such nominating petition shall be filed with the secretary of state not less than twenty-five days before such recall election.

Contents of Ballot

What Ballot Contains—How Recalled—Canvass—When Vacancy.

There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?", following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by stamping a cross (X), his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote cast shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall

vote "Yes," said incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The Canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

Petition, Contents—Filing—Certification—Supplements

What Petition Contains—Affidavit—No Fee for Verification of Affidavit—Where Filed—Time Allowed Clerk—Certificate of Clerk—One Copy to Secretary of State—One Copy Filed—Supplemental Petitions—Disposition of Supplement.

Any recall petition may be presented in sections, but each section shall contain a full and accurate copy of the title and text of the petition. Each signer shall add to his signature his place of residence, giving the street and number, if such exist. His election precinct shall also appear on the paper after his name. The number of signatures appended to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the state shall be competent to solicit such signatures within the county, or city and county, of which he is an elector. Each section of the petition shall bear the name of the county, or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his qualifications, and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be; and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer an oath.

Such petition so verified shall be prima facie evidence that the signatures thereto appended are genuine and that the persons signing the same are qualified electors. Unless and until it is otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of electors. Each section of the petition shall be filed with the clerk, or registrar of voters, of the county or city and county in which it was circulated; but all such sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the date of filing such petition, the clerk, or registrar of voters, shall finally determine from the records of registration what number of qualified electors have signed the same; and, if necessary, the board of supervisors shall allow such clerk or registrar additional assistants for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and submit said petition, except as to the signatures appended thereto, to the secretary of state and file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar of voters to the secretary of state, a supplemental petition, identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid. The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof as of the original petition, and upon the conclusion of such examination shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and shall forthwith transmit such supplemental petition, except as to the signatures thereon, together with his said certificate, to the secretary of state.

Duty of Secretary of State

Certificate of Secretary of State—Filing.

When the secretary of state shall have received from one or more county clerks, or registrars of voters, a petition cer-

tified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state a certificate showing such fact; and such clerk or registrar of voters shall thereupon file said certificate for record in his office.

When Filed

How filed with Secretary of State.

A petition shall be deemed to be filed with the secretary of state upon the date of the receipt by him of a certificate or certificates showing the said petition to be signed by the requisite number of electors of the state.

When Recall May Be Applied

Six Months, Tenure—Exception.

No recall petition shall be circulated or filed against any officer until he has actually held his office for at least six months; save and except it may be filed against any member of the state legislature at any time after five days from the convening and organizing of the legislature after his election.

Repayment of Expenses

When Expenses Repaid.

If at any recall election the incumbent whose removal is sought is not recalled, he shall be repaid from the state treasury any amount legally expended by him as expenses of such election, and the legislature shall provide appropriation for such purpose, and no proceedings for another recall election of said incumbent shall be initiated within six months after such election.

Recall of Governor and Secretary of State

When Governor or Secretary of State Recalled.

If the governor is sought to be removed under the provisions of this article, the duties herein imposed upon him shall be performed by the lieutenant governor; and if the secretary of state is sought to be removed, the duties herein imposed upon

him shall be performed by the state controller; and the duties herein imposed upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

Extent of Recall

The recall shall also be exercised by the electors of each county, city and county, city and town of the state, with reference to the elective officers thereof, under such procedure as shall be provided by law.

Limit to Number of Signatures

No More than Twenty-five Per Cent.

Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising such recall powers in such counties, cities and counties, cities and towns, but shall not require any such recall petition to be signed by electors more in number than twenty-five per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Nothing herein contained shall be construed as affecting or limiting the present or future powers of cities or counties or cities and counties having charters adopted under the authority given by the constitution.

General Laws Apply

In the submission to the electors of any petition proposed under this article all officers shall be guided by the general laws of the state, except as otherwise herein provided.

This article is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting the provisions of this article or the powers herein reserved.

GENERAL LAWS GOVERNING RECALL OF OFFICIALS IN CALIFORNIA MUNICIPALITIES

Political Code 4021a, California Statutes, 1911, Extra Session, p. 580.

An Act to provide for the recall of elective officers of incorporated cities and towns.

[Approved January 2, 1912.]

The people of the State of California do enact as follows:

Procedure

Must be in Office Six Months—Procedure for Recall—Grounds of Petition—What Paper Contains—Oath of Party Circulating Petition—Time Allowed Clerk—Supplement—Additional Help Allowed—When Clerk is Party to be Recalled—Time of Special Election—When Voted on at Regular Election—One Petition for One or More Officials—What Ballot Contains—Names on Ballot—Qualifications of Candidate—Canvass—When Office Becomes Vacant.

Sec. 1. The holder of any elective office of any incorporated city or town may be removed or recalled at any time by the electors; provided, he has held his office at least six months. The provisions of this statute are intended to apply to officials now in office, as well as to those hereafter elected. The procedure to effect such removal or recall shall be as follows: A petition demanding the election of a successor to the person sought to be removed shall be filed with the clerk of the legislative body of such city or town, which petition shall be signed by qualified voters equal in number to at least twenty-five per cent of the entire vote cast within such city or town for all candidates for the office which the incumbent sought to be removed occupies, at the last preceding regular municipal election at which such officer was voted for (or a like percentage of such vote within those precincts of the city or town embraced within the ward or subdivision of the city or town entitled to vote for a successor to the officer named, in case of

an official not elected by the city or town at large), and shall contain a statement of the grounds on which the removal or recall is sought, which statement is intended solely for the information of the electors. Any insufficiency of form or substance in such statement shall in nowise affect the validity of the election and proceedings held thereunder. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence and occupation, giving street and number, where such street and number, or either, exist, and if no street or number exist, then such a designation of the place of residence as will enable the location to be readily ascertained. Each such separate paper shall have attached thereto an affidavit made by a qualified elector of the city or town (or particular subdivision thereof as the case may be) and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed, and of a qualified elector of the city or town (or particular subdivision thereof). Within ten days from the date of filing such petition, the clerk shall examine and from records of registration ascertain whether or not said petition is signed by the requisite number of qualified voters, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate, by the filing of additional papers, duplicates of the original petition except as to the names signed. The clerk shall, within ten days after such supplementing papers are filed, make like examination of the supplementing petition, and if his certificate shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action shall be taken thereon; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same effect. If required by the clerk, the legislative body of said city or town, shall

authorize him to employ, and shall provide for the compensation to be paid, persons necessary in the examination of said petition and supplementing petition, all in addition to the persons regularly employed by him in his office. In case the clerk is the officer sought to be recalled, the duties herein provided to be performed by him shall be performed by some other person designated by said legislative body for that purpose. If the petition shall be found to be sufficient, the clerk shall submit the same to the legislative body of the city or town without delay, whereupon that body shall forthwith cause a special election to be held within not less than thirty-five nor more than forty days after the date of the order calling such election, to determine whether the voters will recall such officer; provided, that if a regular municipal election is to occur within sixty days from the date of the order calling such election, the legislative body of the city or town may, in its discretion, postpone the holding of such election to such regular municipal election or submit such recall election at any such election occurring not less than thirty-five days after such order. If a vacancy occur in said office after a recall petition is filed, the election shall nevertheless proceed as in this section provided. One petition is sufficient to propose the removal and election of one or more elective officials. One election is competent for the removal and election of one or more elective officials. Nominations for any office under such recall election shall be made by petition in the manner prescribed by section 1188 of the Political Code; except that no party affiliation of candidate, signer or verification deputy shall be given, nor shall the election as a convention delegate or participation in a primary election be any bar to signing such petition. Upon the sample ballot there shall be printed in not more than two hundred words, the reasons set forth in the recall petition for demanding the recall of the officer, and upon the same ballot in not more than two hundred words, the officer may justify his course in office. There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which ques-

tion shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate by stamping a cross (X) his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving his certificate of election, the office shall be deemed vacant and shall be filled according to law.

Charter Cities

Charter Cities not Affected.

Sec. 2. This act is not intended to apply to those cities having a freeholders' charter, adopted under the provisions of section 8 of article XI of the constitution, and having in such charter provision for the recall of elective officials by the electors.

Repeal of Conflicting Acts

Repeal of Old Section.

Sec. 3. Section one (1) of an act entitled "An act adding three new sections to an act entitled 'An act to provide for

the organization, incorporation and government of municipal corporations,' approved March 13, 1883, to be numbered 10, 11 and 12 and relating to the government of municipal corporations and providing for the recall, initiative and referendum," and approved March 14th, 1911, is hereby repealed.

GENERAL LAWS GOVERNING RECALL OF OFFICIALS IN CALIFORNIA COUNTIES

California Statutes, 1911, Extra Session, p. 122.

The holder of any elective office of any county or of any township or supervisor district thereof may be removed or recalled at any time by the electors; provided he has held his office at least six months. The provisions of this statute are intended to apply to officials now in office, as well as to those hereafter elected. The procedure to effect such removal or recall shall be as follows: A petition demanding the election of a successor to the person sought to be removed shall be filed with the county clerk, which petition shall be signed by registered voters equal in number to at least twenty per cent of the entire vote cast within such county for all candidates for the office which the incumbent sought to be removed occupies, at the last preceding general election at which such officer was voted for (or a like percentage of such vote within those precincts of the county embraced within the tax district, township or subdivision of the county entitled to vote for a successor to the officer named, in case of an official not elected by the county at large), and shall contain a statement of the grounds on which the removal or recall is sought, which statement is intended solely for the information of the electors. Any insufficiency of form or substance in such statement shall in nowise affect the validity of the election and proceedings held thereunder. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence and occupation, giving street and number, where such street and number, or either, exist, and if no street or number exist, then such a designation of the place of residence as will enable the location to be readily ascertained. Each such separate paper shall have attached thereto an affidavit made by a qualified elector of

the county (or particular subdivision of the county, as the case may be) and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed, and of a qualified elector of the county (or particular subdivision thereof). Within ten days from the date of filing such petition, the clerk shall examine and from records of registration ascertain whether or not said petition is signed by the requisite number of qualified electors, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate, by the filing of additional papers, duplicates of the original petition except as to the names signed. The clerk shall, within ten days after such supplementing papers are filed, make like examination of the supplementing petition, and if his certificates shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action shall be taken thereon; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same effect. If required by the clerk, the board of supervisors shall authorize him to employ, and shall provide for the compensation of persons necessary in the examination of said petition and supplementing petition, all in addition to the persons regularly employed by him in his office. In case the clerk is the officer sought to be recalled, the duties herein provided to be performed by him shall be performed by some other person designated by said legislative body for that purpose. If the petition shall be found to be sufficient, the clerk shall submit the same to the board of supervisors without delay, whereupon the board shall forthwith cause a special election to be held within not less than thirty-five nor more than forty days after the date of the order calling such election, to determine whether the voters will recall such officer; provided, that if a general elec-

tion is to occur within sixty days from the date of the order calling such election, the board may, in its discretion, postpone the holding of such election to such regular election or submit such recall election at any such election occurring not less than thirty-five days after such order. If a vacancy occur in said office after a recall petition is filed, the election shall nevertheless proceed as in this section provided. One petition is sufficient to propose the removal and election of one or more elective officials. One election is competent for the removal and election of one or more elective officials. Nominations for any office under such recall election shall be made by petition in the manner prescribed by section 1188 of the Political Code; except that no party affiliation of candidate, signer, or verification deputy shall be given, nor shall the election as a convention delegate or participation in a primary election be any bar to signing such petition. Upon the sample ballot there shall be printed in not more than two hundred words, the reasons set forth in the recall petition for demanding the recall of the officer, and upon the same ballot in not more than two hundred words, the officer may justify his course in office. There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate by stamping a cross (X) his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated in the manner provided by law for the nomination of candidates for such office as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incum-

bent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving his certificate of election, the office shall be deemed vacant and shall be filled according to law. Where the office of registrar of voters exists, the duties herein imposed upon the county clerk shall be performed by said registrar of voters.

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